Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 4, Original.

THE STATE OF NORTH CAROLINA, COMPLAINANT,

vs.

THE STATE OF TENNESSEE.

IN EQUITY.

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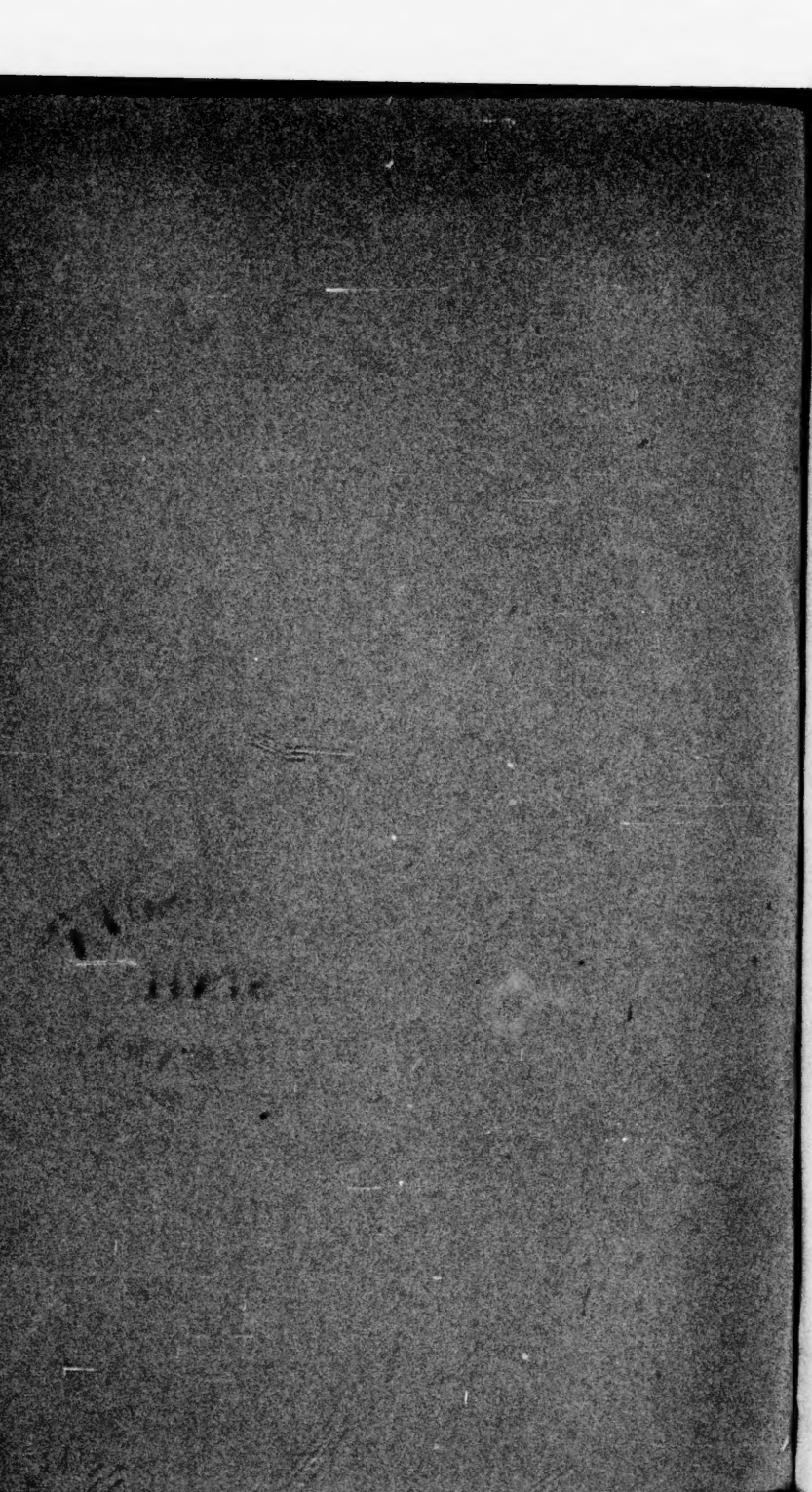

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VOLUME II.

No. 4, Original.

THE STATE OF NORTH CAROLINA
vs.
THE STATE OF TENNESSEE.

1243 And afterwards, to-wit, on Sept. 21, 1897, certain depositions of Dave Orr, H. P. Hyde, Reuben Carver, J. S. Maroney, Samuel Henry, Dr. J. W. Patton and Samuel Sneed were filed in the clerk's office of said court, which depositions are clothed in the words and figures following to wit:

In the U. S. Circuit Court, at Knoxville, Tenn.

No. 1056. In Equity.

CHAS. HEBARD
vs.
D. W. BELDING et als.

The depositions of Dave Orr, H. P. Hyde, Reuben Carver, J. S. Maroney, Samuel Henry and Dr. J. W. Patton and Samuel Sneed, taken by consent, Sept. 15th, 1897, at the office of Capt. J. W. Cooper, Murphy, North Carolina, in the presence of T. E. H. McCroskey, solicitor for compl't, Capt. J. W. Cooper, one of the def'ts and Edward T. Sanford, Sol. for def'ts except J. W. Cooper, said depositions being taken in behalf of def'ts except J. W. Cooper.

Said witness, DAVE ORR, of lawful age, being duly sworn deposed as follows:

I am almost 57 years of age, am a farmer, and live in Graham County, North Carolina. I live about three miles east of the
1244 land in dispute, east of Slick Rock Gap, and about two and ¼ miles from the Little Tennessee River. I have been living in the same place for about twenty-three years. I am familiar with the land in dispute, and have hunted over it all the time since I have lived there.

Questions by Capt. COOPER:

I have always ever since I lived in that country heard that the state line ran up the Fodder Stack lead. It was about 15 years ago

since I heard these men claim Hangover lead to be the state line. I mean the Tennessee side, claiming the line ran up Slick Rock Ridge. I was with the surveyors Hayes and Bogle in the spring of this year when they ran the state line up Slick Rock Creek. I helped carry baggage and provisions. I didn't go all along the line, but I saw all the blocks they cut out. I had never before looked for any state line trees. I knew a sourwood tree or cluster of sourwood trees near Slick Rock Gap. They are marked pretty well around on all sides, but I never examined them as to the exact marks, but I have been around the tree hundreds of times. The old Tallassee Trial, as called by the oldest Indians turns off square to the left just o-posite the sour wood tree, and there is a trail turning to the right down the hollow to the old Joe Locust Indian Camping Ground, about 150 yards away. It was there when I moved there, an old board camp about 14 feet wide. The old trail leads down to it yet. The blaze on the sourwood pointed both to the right and left in the direction of the trail in each way. I have often been up and down that ridge, leading to the Hangover. I have seen occasional blazes along the trails, but didn't know what they were. I have never traced the state line and don't know the state line marks. I mean blazes, but I don't mean there were any hacks and blazes and don't mean they were state line blazes. There is an old Indian trail leads along this ridge, and it is blazed occasionally. There are blazes on all the old Indian Trails and the same blazes extend all the way along down the old Tallassee Trail from the sourwood down to Slick Rock Creek. These are the same kind of blazes that are on the sourwood. The same blazes extend further along the old Tallassee Trail to Stone Grave Gap and to the Yellow Hammer Branch and down to the old Tallassee Ford.

I knew old man John Debity and his son John Debity and Dave Debity, another son, who married my daughter. They all lived on Mr. Belding's land, if it should prove to be his. They were there claiming as tenants of D. W. Belding—that was my under-
1245 standing. The old man and Dave lived on the east side of the creek and young John lived in Nichols Cove, also on the east side of the creek but nearer the river. I have known of their living there for about nineteen years, as near as I can come at it. It was about two years after I moved where I now live. I don't think it was over a year or a year and a half after the old man Debity came there that he got a lease from Belding. I have since then seen old man Debity and Mr. D. W. Belding together. It was at Debity's house, and I heard Mr. Belding tell old man Debity to go ahead on his, Belding's land and set out a good orchard but not to kill any more timber. That was fourteen or fifteen years ago. Debity promised not to kill any more timber. Mr. Belding also told Mr. Debity to keep other people's stock off the Belding's land, and Debity went ahead and did keep other people off. I have since that time heard old man Debity tell a man named Bill Johnson, that he had that land under control for Mr. Belding, and he wouldn't let Johnson go in and settle in the Big Fat Cove. That is the only man

I ever knew him to stop, but I have heard him tell other people that he had the land under control from Belding.

I heard my son-in-law, Dave Debity, while living on these premises, say that Maj. T. E. H. McCroskey had paid him through Bill Debity another son of the old man's, $50.00 for the lease—that is, that Maj. McCroskey had given Bill Debity the $50.00 to give to the old man for the lease and that Bill had given it to the old man—that is what Dave told me. That was about 4 years ago.

(Compl't excepts to statements of Dave Debity as heresay and incompetent.)

Bill Debity is about 45 years old, and Babe is about 27.

Babe Debity lived with his father when he first moved there. Bill didn't live on the land in dispute. Young John Debity also lived on the same property, within the Big Survey. He lived in Nichol's Cove. Old man Debity claimed this also within his lease from Belding, as it was part of Belding's land. They were both lessees of the Beldings and young John sold his lease from Belding for $30.00 to Jim Farr, about 12 or 14 years ago. Old man Debity made annual crops on this land on both places from about 19 years ago up until this year—that is, he did it himself or had it done. Jim Farr had six children who for at least 4 years while he lived on that land were enrolled to draw free money for free schools for Graham
1246 County, North Carolina, under the North Carolina laws. Old man Debity had one or two for a while.

I know Henry Ditmore. He lives on the head of Little Slick Rock Creek on the Tennessee side, according to the Slick Rock Creek line run by Hayes and Bogle. He has never lived east of Slick Rock Creek, on the land in dispute.

Ab Cline never lived on the east side of Slick Rock Creek. He has lived on the head of Little Slick Creek for about 3 years; before that he lived on First Creek on the Wetmore land.

Questions by SANFORD, Sol.:

The Sourwood I have testified about is a double sourwood in Sourwood Gap. There is the best Deer stand in that country right about the sourwood; I have often been there. The sourwood has a good many marks on it. I think I heard Williams and Mr. Hoyt once speak of it as a state line tree. It was this way: They stopped at my house once at night and said if there was any state line tree on the ridge it was that sourwood, and then the next day they ran on up that ridge and came back and said they couldn't find any state line trees, and turned and went down and tried the creek to see if they could find the state line. That was between 12 and 15 years ago.

Questions by Capt. COOPER:

I have been along the lead between Big Fodder Stack and its junction with Hangover Ridge, and saw the trees that were cut out and blocked by Hayes and Bogle. I saw them both before and after they were cut out, and have always understood both before and since, and

ever since I have lived there, that this Fodder Stack Lead was the state line.

I have seen a spruce pine marked fore and aft as a state line tree, close to the Big Fodder Stack. The trail does not run right by the tree—it does not stand very far. The tree is on top of ridge but the trail is a little on one side. I never paid attention to any other marked trees on the ridge leading down from the top of the Fodder Stack to the creek, because I haven't been there.

Cross-examination:

I live on my own land. I bought from my brother, George Orr. I am not a tenant of D. W. Belding; never have leased anything from him. My own cattle runs on his land. My land is in the center of his survey, and when I turn them out they immediately get on his land—that is all. Jim Farr lived about 6 or 7
1247 miles from the School House in Graham County. Farr didn't send his children to school. I think I gave his children in for enrollment in Graham Co., but I wasn't the Justice of Peace or enrolling office. I gave them in to Mr. Rymer, the Justice of the Peace. R. N. Archer, I think, had a lumber contract on Slick Rock Creek from Mr. Belding.

(Def'ts except to the foregoing statement as to lumber contract as not made of witness' own knowledge.)

They built a lumber road up Little Slick Rock Creek, about to Ab Cline's, I suppose, though I call it a "ration road" to get victuals over.

I didn't know what the state line marks were before the surveyors went in to survey this last year. I don't know yet what they are, except what they say. But I saw the line myself.

And further deponent saith not.

his
DAVE x ORR.
mark.

Attest:

EDWARD T. SANFORD.

Jurat to the foregoing deposition waived.

Filed Sept. 21, 1897. J. T. Carter, Deputy Clerk.

1248 The next witness, SAMUEL SNEED, being duly sworn, says:

I live in Graham county, N. C., and am forty years of age. I was present with T. B. Reynolds who went to see Mr. John Debity about taking a lease. Mr. Reynolds told Mr. Debity he had come to have him, Debity, to take a lease or get off the land. Mr. Debity said he wanted a lease; then Mr. Reynolds wrote the lease and Debity signed it. I don't know whether Mr. Debity's son John signed it or not, but he was there. My judgment is that young

John signed the lease, and I suppose he did. Mr. Reynolds went there for that purpose.

Further saith not.

SAM SNEED.

Filed Sept. 21, 1897. J. T. Carter, Deputy clerk.

Formal caption certificate transmission and jurat waived, witnesses having been duly sworn and all grounds of exception reserved to the hearing.

LUCKY, SANFORD & TYSON,
For Compl'ts.

1249 The said witness, J. S. MARONEY, being duly sworn deposed as follows:

I am 61 years old, have lived in Murphy, North Carolina, for 58 years, am now and have been for 7 years a newspaper editor, and am a minister of the Methodist church. I knew Robt. Ballew; I think his initials were R. B. I knew him well. He lived in Bald Place—I have been at his house—Monroe county, Tennessee. I was with him on Slick Rock creek; went with an English-
1250 man to examine minerals. We went to Ballew's house in Tennessee and I think to Harrison's house also, and then we all went up to Slick Rock. This was about the commencement of the war, I think, though I am not good on dates. I have never been on Slick Rock but once. I believe Col. Johnson, of London, was then with us. We went on Slick Rock, went around by Little Fodder Stack, Big Fodder Stack, &c., and looked at the property which they pronounced valuable. The Harrison who went with us was the one who claimed the land. They said they were citizens of Tennessee, that the property lay in North Carolina, and that as under North Carolina lands they could not enter the lands they wanted my father or someone else to enter the lands in his name for them. The mineralogist John —— went with us. I understood they afterwards entered the land or had it entered, and that they afterwards owned it.

(Complainant excepts to aforesaid testimony of witness' understanding as hearsay.)

They afterwards sent money from Tennessee by me to my father to make payments on that same land on Slick Rock.

And further deponent saith not.

J. S. MARONEY.

Filed Sept. 21, 1897. J. T. Carter, deputy clerk.

1251 Said witness, SAMUEL HENRY, of lawful age, being duly sworn, deposed as follows:

I am 78 years old, have been living in Murphy, N. C., about 55 years. I now keep a boarding house. I had some acquaintance

with a man named Ballew, a preacher who said he came from Tennessee. I think I entered some lands on Slick Rock creek, somewhere about 1870, for him and someone else. It was entered in my name, as I recollect. I think the reason was that he considered the land lay in North Carolina and they thought that under the law a man could not come from Tennessee here and enter land in this state, and so they got me to enter the land in my name, but really for them.

They made the payments on the land. I think they sent me part of the money by old W. W. Maroney the father of J. S. Maroney. It all seems like a dream to me. I had forgotten about it until Capt. Cooper spoke to me about it, but this is the way I think it was.

SAMUEL HENRY.

Filed Sept. 21, 1897. J. T. Carter, deputy clerk.

1252 Said witness, Dr. J. W. Pyrtox, being duly sworn, deposed as follows:

I am 69 years old, live in Murphy, Graham county, North Carolina, have been living there since Oct. 30, 1849, am a practicing physician and have been engaged in practice since May, 1852.

I knew old man Thomas Tatham who was one of the party when the commissioners for North Carolina and Tennessee ran the state line in 1821. We called him grandsire Tatham. He has been dead 20 years. I also knew William Graves who was one of the party, and is also dead. I don't know of any of the party that are now living. I have had conversations with both of these persons as to where they ran the state line.

I had a conversation about it with Mr. Tatham about forty years ago. In giving me a history of his life he said he was on the survey between North Carolina and Tennessee; that they ran the line from a point in Haywood, beginning on a rock that had been marked, along the main divide of the Smoky Mountains to the Tennessee river, crossed the river and marked a large pine that stood near the bank of the river near the mouth of Slick Rock creek, and as I recollect 60 or 65 miles from the beginning, and that they ran up Slick Rock creek on the west side to the fork of the creek, crossed the west fork and struck the point of a ridge that ran down into the fork of the creek, and ran up that ridge to the divide that ran up to Big Fodder Stack, over the Fodder Stack and on the main divide to Haw Knob; thence up the Haw Knob mountain to Laurel Top and down the Laurel Top to the divide between Snowbird and Tellico, and ran the line some distance and marked it on that divide; saw that they were going too far south to keep the trend of the mountain, turned and went back and took a ridge from Laurel Top that ran westerly to Tellico river, crossed the river at a short distance from the river marked a holly tree on one side—Tenn. or Ten., and on the other side N. C., and from there to Beaver Dam Ball and on to Unaka Gap; then turned south and ran to the Hiwassee River and on to the Georgia line.

I had a conversation later about the same matter with William Graves, after I owned some land out there. His statements were about the same as Tatham's, though he was not as intelligent a man as Tatham and couldn't remember as well. He remembered the holly tree and the pine on the bank of the Tennessee river, but he couldn't give me the other points as well. My conversation with Graves was in the fall of '67 as I remember. It was just
1253 before I went out there and I went in November, '67. I think Graves was in the capacity of one of the helpers—he was a young man at the time.

Questions by Capt. COOPER:

I became interested by my father-in-law entering two tracts of land in '54, on the head of Little Slick Rock. At the end of the war they had not been paid for and he told me in 1867 that if I would pay what was due on them he would give me the lands, and that was how I came to talk to old man Graves. I went to see him to see if I could get any point to get a start. I remembered what Tatham had said about the holly, and I went and asked Graves and he told me about it again, and I went and hunted that holly up. My father-in-law, Wm. H. Maroney, with me. We found the holly on the west side of Tellico river, marked with either Tenn. or Ten., and N. C., and traced the line to the river; then went to the opposite side of the river; found marked line as on opposite side—an old line—traced that line up to what is known as the state ridge, across Laurel Top and to the Haw Knob Mountain; down that to Haw Knob, and down that to what was known as the old Stratton place, the old fence of which was still there, though torn down; went through the Stratton meadows to the ridge beyond, and then found an old tree marked as the one we had been tracing; traced it some distance that evening and then took a trail down to Bob Stratton's; stayed all night with Bob Stratton and eat bear meat and Irish potatoes. The next morning Bob Stratton went with us to the line and showed us the old marked line, and we followed it within 300 or 400 yards of the head of Little Slick Rock; we tried to trace it to Little Fodder Stack, but couldn't do it; we got bothered and lost trying to trace it to Litle Fodder Stack. We then went back to the old line we had been tracing and by sighting concluded we were off the line and went back and found the marked line leading down the ridge between two forks of Slick Rock. We went on, following the line down the ridge to the foot where the forks of the creek came together, at a distance I think of four or five miles from the Tennessee river—but this only guess work. Then we crossed the prongs of Slick Rock and found an old line leading down by the creek just outside of the Laurel as near the creek as they could get along and traced it down the creek that way to the creek's mouth, and found a large pine tree marked. The marks were not very distinct, but we were satisfied it was old marks. It was 10 or 12 steps below the mouth of Slick Rock.

1254 In consequence of that tracing I abandoned the land because I believed as it lay mostly north and west of the line

I traced that it was in Tennessee; also I believe the line I had traced to be the state line, and abandoned taking up from the state the land north and west from the line I had traced, as I believed it belonged to Tennessee though I would have liked powerful well to have had it. There was not over 150 acres that lay east of this line.

These lines all along that I traced all seemed to be old marks.

The holly had also a mark M and 83 or 86. Graves told me, I think, it was marked M83, but I can't be certain whether it was marked M, 83 or M. 86.

I traced this line in Nov. 1867, I think. I knew it was November.

And further deponent saith not.

J. W. PATTON.

Filed Sept., 21, 1897. J. T. Carter, deputy clerk.

Exception.

Compl't by attorney comes and excepts to statements of Graves and Tatham because it is not shown that they were surveyors locating the line, and their statements for that reason are not competent evidence. It is simply hearsay testimony.

T. E. H. McCROSKEY,
For Compl't.

1255 In the Circuit Court of the United States for the Eastern District of Tennessee, Sitting at Knoxville, Tennessee.

In Equity.

CHAS. HEBARD,
vs.
D. W. BELDING et als.

The deposition- of Jas. McDaniel, M. L. Brittain, John Dockery, Jas. Whitaker, W. P. Phillips, and W. P. Jones, taken in behalf of all the def'ts except J. W. Copper, at the home of Jas. Whitaker, near Andrews, N. C., on Friday, June 17, 1898, commencing at 8 o'clock a. m. and the deposition of Stephen Whitaker taken on said date at his home near said Andrews, N. C., pursuant to
1256 notice to counsel for complainant, hereto attached, copy of letter from Lucky, Sanford & Tyson, to T. E. H. McCroskey dated June 14th, 1898, and reply of T. E. H. McCroskey to E. T. Sanford dated June 15, 1898, all of which are hereto attached. Said depositions taken before J. W. Fletcher in pursuance to commission to him directed, hereto annexed. Being taken in the presence of E. P. McQueen and Edward T. Sanford of counsel for defendants except J. W. Cooper. Neither the complainant or his counsel being present.

Said witness JAS. MCDANIEL of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and where do you live?

A. I am 77 years old and live about 4 miles from Murphy, N. C., and 25 miles from here. I have lived in this country over sixty years.

Q. 2. What is your business?

A. I am a farmer, have a small farm, do nothing else.

Q. 3. Did you ever know Wm. Allen and Wm. Gravis?

A. Yes, I knew them both.

Q. 4. How long did you know them?

A. I knew Wm. Gravis over fifty years and I knew Allen as long as he stayed in this country, some fifteen years.

Q. 5. Are they both dead

A. I know Gravis to be dead and I understand Allen is.

Q. 6. How close did you live to these gentlemen?

A. I lived about two miles from Allen, and ¾ of a mile from Gravis.

Q. 7. Were either or both of them with the parties or commissioners from Tennessee and North Carolina who ran the state line in 1821?

A. I personally don't know but Wm. Gravis told me that he was along and carried provisions for the party, and it was reported in the neighborhood that Allen was along also and carried provisions.

Q. 8. If either of them ever told you how the commissioners ran the line south of the Little Tennessee river, that is how they crossed the river, and where they ran and located the line after crossing the river, please state what they told you.

A. Mr. Gravis told me that they crossed at Talaskee ford or some name like that, and then come up the river to Slick Rock Creek, then ran up the Creek to the forks of the creek, then up a ridge between the forks of the creek to the top of the mountain and the main lead, and then along the main lead of the mountain.

1257 Q. 9. Haw far do you live from the land in question?

A. About twenty or twenty-five miles.

Q. 10. How long have you been living where you do now?

A. I lived there fifty-eight years ago and have been living there all the time with the exception of two or three years.

Q. 11. What has been the general understanding in that section of the country as to the state line in reference to Slick Rock Creek?

A. Has been the general understanding that it ran up Slick Rock Creek.

Q. 12. Did you talk to Gravis more than once about this matter?

A. Gravis worked for me in making iron for some time, and we often talked about this state line. We hunted together and he boarded with me while burning coal for the iron. I didn't hunt much. He would describe to me how the state line ran. He also spoke to me about the line running along the Laurel Top and the Main Lead.

Compl't excepts to all statements of the witness McDaniel as to conversations had by him with Wm. Allen and Wm. Gravis, and others upon the ground that they are incompetent.

WEBB & McCLUNG, *Sol's.*

Q. 13. You never had any talk with Allen about the line?

A. No.

Q. 14. Did you ever hear of Thos. Tatham being in the party with the commissioners who ran the line?

A. Yes, I think I have heard that he was along. I think that was the general report.

And further the deponent saith not.

JAMES McDANIEL.

Subscribed and sworn to before me this 17th day of June, 1898.

J. W. FLETCHER, *Com.*

Jas. McDaniel, 1 day's attendance 20 miles' travel one way.

Filed June 20, 1898. J. T. Carter, Deputy Clerk.

1258 Said witness, JOHN DOCKERY of lawful age, being duly sworn, deposes as follows:

Q. 1. How old are you and where do you live?

A. I am 62 years old and live on Hanging Ivy Creek in Cherokee County, N. C., have lived there 52 years.

Q. 2. What is your occupation?

A. I am a farmer.

Q. 3. How far do you live from this land in question?

A. I live about thirty miles from the mouth of Slick Rock Creek.

Q. 4. Do you know where Tallassee Ford is?

A. Yes.

Q. 5. Does the old Indian town of Tallassee, commonly called the Tallassee Old Town, lie up or down the river from Tallassee Ford?

A. I understand that it lies up the river between the Ford and the state line.

Q. 6. Did you know Wm. Allen and Wm. Graves?

A. Yes, I have known them ever since I was ten years old. Allen was a sort of kin folks of mine. Both of them married kin folks of mine.

Q. 7. How far did you live from them?

A. Our farm and Allen's lacked about a quarter of a mile of joining, the houses were about a mile apart. Graves lived some two miles from me.

Q. 8. Do you know whether Allen or Graves were of the party with the commissioners of Tenn. & N. C., who ran the state line in 1821?

A. Allen told me he carried rations for the party, and Graves told me that he was along, but I do not know in what capacity. I do not recollect of his telling me.

Q. 7. Was there any general understanding in the community that they were along with the party?

A. Yes, it was the general understanding that they were along.

Q. 8. Were you ever with either of these persons in the mountain-?

A. Yes, I have been with both of them in the mountains hunting.

Q. 9. Did you ever have any conversations with either Allen or Graves about the state line run by the commissioners?

A. Yes, both of them.

Q. 10. State when and where it was?

A. It was out there on what they said was the state line while we were hunting. My conversation with old man Graves was
1259 while we were down by Tellico River, he told me about the state line down there, but he told me nothing about the line on Slick Rock. My conversation with Allen was when we were on the main mountain near Jeffries and he told me that they went down to Tallassee Ford and crossed and then came up to Slick Rock and ran the line of Slick Rock Creek.

Q. 11. How much time have you spent in the mountains?

A. Before the war I was in the mountains every year with cattle during the summer season, and hunted in the mountains every fall, and since the war have been there nearly every year but not so far as before.

Q. 12. What has been the general understanding in the community during all these years as to where the state line was in reference to Slick Rock Creek?

A. The general understanding was that it ran up Slick Rock Creek and along the main divide by the Laurel Top.

Q. 13. When did you have the conversation with Allen that you have testified about?

A. It was before the war.

Q. 14. Are Wm. Allen and Wm. Graves both dead?

A. I helped bury Wm. Graves. Wm. Allen's brother married my sister and it is generally understood that Wm. Allen is dead. This is a family understanding.

Q. 15. Do you know John Deputy, Sr.?

A. Yes.

Q. 16. Did he ever tell you where the state line ran?

A. He came up to our camp over night several years ago and said the line did not run where McClelland run it, but ran up Slick Rock. This conversation took place while I was with McClelland who was running the line on past the Big Fodder Stack to the Little Fodder Stack, and Deputy said the line did not run that way, but that it turned off at Big Fodder Stack and ran down the ridge to Slick Rock Creek, and then down the creek. Deputy and a man named Denton showed us the line between the Laurel Top and Big Fodder Stack, the Laurel Top lies south of the junction of the Fodder Stack Lead and the Hangover.

Q. 17. When you were running the line with McClelland did you notice any old marked trees?

A. I saw old marked trees along between Laurel Top and Big Fodder Stack, some of them between the junction of the Hangover Fodder Stack leads and Big Fodder Stack but I did not see any old marked trees on the line McClelland ran beyond the Big Fodder Stack and passing the Little Fodder Stack to the river. I
1260 am not a surveyor myself, and did not know that these old marks were state line marks, but they said they were.

Q. 18. Are you familiar with the mountain south of the junction of the Fodder Stack and Hangover Lead, and extending south of the Laurel Top and beyond the Tellico River?

A. Yes, that is the section of the country I have pastured my cattle in for fifty years.

Q. 19. What part of the mountain, if any, is called the Unaka or Unicoi Mountain?

A. I never head it called the Unaka or Unicoi Mountain nearer the Little Tennessee river than the Beaver Dam Bald, which is southwest of the Tellico River. The main mountain on both sides of where the Unaka Turnpike road crosses the mountain to Tennessee, is called the Unaka or Unicoi Mountain, but is not called this beyond Beaver Dam Bald.

Q. 20. Did this land in question formerly lie in Cherokee Co., N. C.?

A. It did until Graham County was formed, which was cut off from Cherokee County since the war, and since then it has been in Graham Co.

Q. 21. How far do you live from this place, Andrews?

A. I live 23 miles from here.

And further the deponent saith not.

JOHN DOCKERY.

Subscribed and sworn to before me this 17th day of June, 1898.

J. W. FLETCHER, *Com.*

Compl't excepts to all statements of the witness Dockery as to conversations had by him with Wm. Allen and Wm. Graves, or others, upon the ground that the same are incompetent.

WEBB & McCLUNG, *Sol's.*

John Dockery, 1 day's attendance 23 miles travel one day.

Filed June 20, 1898. J. T. Carter, Deputy Clerk.

1261 *Cross-examination of the Foregoing Witness, John Dockery, by T. E. H. McCroskey, Esq., Sol., for Compl't, at Dickey's Hotel, Murphy, N. C., Aug. 30, 1898, in Presence of Solicitors for all Parties.*

Cross-exam.:

I was along with McClelland when he undertook to locate the state line about 4 or 5 years ago. I was an axeman. I don't know how he happened to run the line. Ben Posey, a lawyer of Murphy, N. C., came and asked me to go. He paid me the money for going but I suppose he got it from the state. He told me the state paid it. I believe Posey was state senator at the time. We went to where the turnpike road crosses the Unaka mountain and from there to the Hiwassee river, then we came back to the turnpike and ran north east to the Tellico river, then we crossed the river and up what we called the state ridge to the Laurel Top, then on with the divide of the mountain by Jeffries to the Fodder Stack. I think we left the main mountain and took down a ridge before we got to the Fodder Stack, we didn't cross Slick Rock and crossed no water but went around the head of Slick Rock and on the highest divide to the river coming in about ¾ or a mile below the mouth of Slick Rock. We went down from the main ridge to strike the Fodder Stack, then went over the Big Fodder Stack, then by Dr. Crowden, then over the Little Fodder Stack. The last old marked line I saw was on a birch on the Big Fodder Stack about a mile after we left the main divide. I don't know whether it was a state line mark or not. I don't know the state line mark. By this survey we put all
1262 the waters of Slick Rock creek in North Carolina. We marked the line along and put up rock mile posts, I mean the hands did this and we established this as the state line between Tennessee and North Carolina. The parties who were along and assisted in the survey were John McClelland, Allen E. Fain, Wm. Watson, John Aikins, J. W. Palmer, R. W. Brittain, my son James Dockery, part of way that from Fains to the river and Sam Bryson and that is all I remember except Will Howell.

Re-examination:

The mark on the birch was the same kind of mark that we found all along on the trees from the Hiwassee river, but we found none beyond the Big Fodder Stack, some places the marked trees were thicker than others, especially on they were thicker the state ridge. The marks were three hacks with an axe. The marks were all alike; I looked particular as had a cousin that had killed a man and wanted to know where the line was from where we turned down to Fodder Stack the main high ridge runs eastward towards the Cheoah. I went on it about a mile then, but I had been further out there hunting. I went out on this ridge for about a mile hunting for the line but couldn't find it, we hunted carefully, cutting down the trees we hit running with the transit so as to clear the path. I am not a surveyor. When we were on the McClelland survey we did not go

down on Slick Rock creek at all hunting for the lines. I had no control of the party and nothing to do with where the line was located. McClelland was boss. McClelland is living and lives here in Murphy. I remember the marked holly tree on Tellico river.

And further deponent saith not.

JOHN DOCKERY.

Bill of costs John Dockery, attendance 1 day, 1.00, 14 miles 70c. $1.70 paid by Lucky, Sanford & Tyson.

Formal caption, certificate transmission and jurat waived and it is agreed that the attached depositions of James McDaniel and others, taken June 17, 1898 may be treated as if re-taken on proper notice with the addition of the cross-examination of John Dockery which is to be added to his original deposition and become part of same and may be read on the trial of this cause as if so retaken and subject however, to all exceptions as to the competency,
1263 relevancy or materiality of the evidence which are reserved to the hearing.

T. E. H. McCROSKEY,
Sols. for Compl't.
LUCKY, SANFORD & TYSON,
Sol's. Def'ts Except J. W. Cooper.

(Endorsed:) No. 1056. Chas. Hebard vs. D. W. Belding, et al. Depositions of James McDaniel, et al. Filed Sept. 1, 1898. J. T. Carter, deputy clerk.

1264 Said witness M. L. Brittain of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and residence?
A. I am 71 years old and live in Murphy, N. C., 16 miles from here.
1265 Q. 2. Where did you live from 1851 to 1855?
A. At or near the present town of Robbinsville, N. C.
Q. 3. How far is that from the land in dispute?
A. About 20 miles.
Q. 4. What is and has been your occupation?
A. I now keep a private hotel, have been a farmer and merchant.
Q. 5. Were you ever in Slick Rock Basin with J. W. C. Piercy, the former county surveyor of Cherokee County?
A. Yes.
Q. 6. What was the purpose of your visit?
A. I had entered a quantity of lands and was there with him surveying them.
Q. 7. What, if anything, did Mr. Piercy tell you at that time in reference to the state line?
A. He told me that the line crossed the river at the mouth of Slick Rock Creek, and that the creek was the line. I was careful about this as I did not want to get my lands located over the state

line and I located my entries up the river between Slick Rock Creek and the mouth of Chevah River.

Q. 8. Is Piercy living, if not, when did he die?

A. Mr. Piercy died in 1868, at about 70 yrs. of age.

Q. 9. Did Mr. Piercy do much surveying in that section?

A. Yes, a great quantity. He surveyed nearly all that country. He surveyed a great deal for me.

Q. 10. Do you know by general reputation in the community where the state line was, and if so, where?

A. Yes, in that section of the country Slick Rock Creek was by general reputation known as the state line.

Q. 11. Do you know the portion of the mountain that is called the Unaka or Unicoi Mountain, and if so, which?

A. It is called the Unaka or Unicoi on both sides of where the Unaka Turnpike road crosses the mountain from Murphy, N. C., into Tennessee.

Q. 12. As you go from the Unaka Turnpike toward the Little Tennessee River, how far is it called the Unaka or Unicoi Mountain?

A. As far as the Beaver Dam Bald and no farther as I have ever heard.

Q. 13. Do you know whether or not old man Thos. Tatham was one of the party with the commissioners from North Carolina and Tennessee, who ran the state line in 1821, and if so, how?

A. Only by general reputation and it is also my recollection that Mr. Piercy told me that Mr. Tatham had told him, that
1266 the commissioners ran the line up Slick Rock Creek.

Q. 14. In what county of North Carolina does the land in dispute now lie, and in which did it formerly lie, assuming that it is in North Carolina?

A. It now lies in Graham County, formerly it laid in Cherokee County before the formation of Graham County.

And further the deponent saith not.

M. L. BRITTAIN.

Compl't excepts to all statements of the witness Brittain as to conversations had by him with Mr. Piercy or others, upon the ground that they are incompetent.

WEBB & McCLUNG, *Sols.*

Subscribed and sworn to before me this 17th day of June, 1898.

J. W. FLETCHER, *Com.*

M. L. Brittain, 1 day attendance 16 miles travel one way.

Filed June 20, 1898. J. T. Carter, Deputy Clerk.

1267 The said witness Jas. Whittaker of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and residence?

A. I am 91 years old and live near Andrews, in Cherokee Co. N. C.

Q. 2. How long have you lived here?
A. I settled here in 1873 and have lived here ever since.
Q. 3. What has been your occupation?
A. Have been a farmer, and for a number of years was a justice of the peace for the county, and was also a commissioner of the county, postmaster for a while.
Q. 4. Did you know David Taylor?
A. Yes, Taylor was a friend of mine. I knew him from 1837 until he died, some forty years or more. He lived on a farm just the other side of Andrews from here.
Q. 5. Did he ever say anything to you about being one of the party with the commissioners from Tenn., and North Carolina who run the state line in 1821, if so what did he tell you?
1268 A. Yes, he did.
Q. 6. What did he tell you?
A. He told me he was one of the party with the commissioners who run the line, but I don't remember of his saying in what position.
Q. 7. Did he tell you how the line ran in reference to Slick Rock Creek?
A. He told me it ran right up Slick Rock Creek and to the top of the mountain.
Q. 8. Did he tell you anything about how it ran after it got to the top of the mountain?
A. Yes, he said it ran along the top of the mountain until it came to the Long Ridge, they camped on the Long Ridge where some of the men got whiskey and became drunk, at this point they set up a stone and run the line south from there to the Georgia line.
Q. 9. Did he ever tell you that Thos. Tatham was one of the party?
A. I think he did, but can not say positively.

Compl't excepts to all statements of the witness Jas. Whitaker as to conversations had by him with David Taylor or others, upon the ground that they are incompetent.

WEBB & McCLUNG, *Sols.*

And further the deponent saith not.

JAS. WHITAKER,
By J. W. FLETCHER.

Subscribed and sworn to before me this 17th day of June, 1898.
J. W. FLETCHER, *Com.*

Jas. Whitaker one day's attendance.

Filed June 20, 1898. J. T. Carter, Deputy Clerk.

1269 The said witness W. P. JONES of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and where do you live?
A. My age is 65 years, I live two miles from here.

Q. 2. What is your occupation?
A. A farmer.
Q. 3. How long have you been living where you now live?
A. Have been living there 28 years.
Q. 4. Where were you living before?
1270 A. I have been living in the same neighborhood since I came to this section, some fifty-one years ago.
Q. 5. Do you know the general understanding in the country in reference to where the state line run after it crossed the Tenn. river?
A. I have never been in that section, but have heard a great deal of talk about it and the general understanding has always been that it ran up Slick Rock Creek.
Q. 6. Did you know J. W. C. Piercy in his lifetime?
A. Yes, I knew him well. I have carried a chain for him on a great many of his surveys.
Q. 7. Did you ever hear him say anything about the state line in that section?
A. Yes, he always said it crossed the river at the mouth of Slick Rock Creek and ran up the Creek.
Q. 8. Did you know David Taylor who lived just the other side of Andrews?
A. Yes, I knew him well, he died about fifteen years ago, I should say.
Q. 9. Do you know the part of the mountain that is called the Unaka or Unicoi Mountain?
A. Yes, it is called Unaka or Unicoi about the point where the Unaka Turnpike crosses the mountain, from there to the Beaver Dam Bald and also in the lower part of the country.

And further deponent saveth not.

W. P. JONES.

Subscribed and sworn to before me this 17th day of June, 1898.
J. W. FLETCHER, *Com.*

Compl't excepts to all statements of the witness W. P. Jones as to conversations with J. W. C. Pierce, also as the general understanding of his neighborhood because they are incompetent.

WEBB & McCLUNG, *Sols.*

W. P. Jones 1 day's attendance. Filed June 20, 1898. J. T. Carter, deputy clerk.

1271 The said witness, W. P. PHILLIPS, of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and residence?
A. I am 44 years old and live in Andrews, N. C.
1272 Q. 2. What is your business?
A. Farmer.
Q. 3. How long have you lived in Andrews, N. C.

A. Was born and raised in Cherokee Co., and have lived in the county all my life except about (7) seven years and those I lived in Graham county, four years of the time in Robbinsville where I was deputy sheriff and jailer.

Q. 4. How far was where you lived in Graham Co. from Slick Rock creek?

A. About 16 miles.

Q. 5. Are you familiar with the Slick Rock region?

A. Yes, I know it well.

Q. 6. How large is Slick Rock creek?

A. It is a good sized creek, not a very big one nor very small, but what we call a good sized mountain creek.

Q. 7. Is the river opposite the mouth of Slick Rock creek and up above to where the Hangover lead comes to the river, rough or smooth, say for half mile above Slick Rock creek?

A. Rough, it has a great many large rocks in it.

Q. 8. When were you first up in the Slick Rock region?

A. About 17 years ago.

Q. 9. Was old man John Deputy up there then?

A. Yes.

Q. 10. Did he tell you where the state line ran?

A. Yes.

Q. 11. How did he say it ran?

A. He was standing by Slick Rock creek and pointing to it said the line ran up the creek to Fork Ridge. The Fork Ridge was the ridge leading up to the Big Fodder Stack.

Q. 12. Which side of the creek was Deputy then living on?

A. On the east side of the creek, in North Carolina, as he said.

Q. 13. How did you happen to have this conversation with him?

A. He had been accused of stealing a bear and trap over in Jeffries west of the Fodder Stack and some parties threatened to prosecute him for it, he said they could not do it in North Carolina, as he lived in N. C. and the place where it was claimed he stole the bear was in Tenn. that he knew this, as the line between the states ran up the creek and that while he lived on the east side of the creek, the place from which the bear was said to have been taken, was on the west side.

Q. 14. Do you know what Deputy's general reputation was, and if so, what was it?

1273 A. It was bad.

Q. 15. From his general reputation in the community would he be entitled to full faith and credit on oath?

A. I don't think he would.

Q. 16. Do you know Andrew and Marion Carriger?

A. Yes.

Q. 17. Are they alive?

A. Yes, I saw Marion about a month ago.

Further deponent sayeth not.

W. P. PHILLIPS.

Subscribed and sworn to before me this 17th day of June, 1898.
J. W. FLETCHER, *Com.*

W. P. Phillips, 1 day's attendance. Filed June 20, 1898. J. T. Carter, deputy clerk.

1274 The said witness, STEPHEN WHITAKER, of lawful age, being duly sworn, deposes as follows:

Q. 1. What is your age and residence?
A. I was 84 years old last February and reside at Andrews, N. C.
Q. 2. What is your occupation?
A. Farmer all my life.
Q. 3. How long have you been living here?
A. Have been living here since 1838, lived in Macon county before that.
Q. 4. Did you know old man Thos. Tatham and David Taylor?
A. Yes, I knew them both well. David Taylor was my father-in-law.
Q. 5. Did you ever hear them say anything about the state line in reference to Slick Rock?
A. I have often heard Thos. Tatham speak of being as I understood one of the commissioners who run the state line, that afte. they crossed the river they run the line up Slick Rock creek and he would laugh and tell me about how the party after getting to a certain point, all getting drunk and running a straight line to Georgia, and lost North Carolina, Ducktown, have often heard him joke and tell about it in crowds. Tatham and I were great friends and were often together and would often hear him speak about running the line and losing Ducktown to North Carolina. I have heard David
1275 Taylor say he was with the party who ran the line, but am not certain that I ever heard him say how the line run. I have often heard J. C. W. Piercy say that Slick Rock creek was the state line, and that he would not survey lands west of Slick Rock creek, because he considered that the state line. He surveyed a great many tracts for me, he was one of the best surveyors in North Carolina. Tatham lived about two miles from me and Taylor about six miles. They have all been dead for seven years and were all old men when they died. I think Tatham died before Piercy, the general understanding has always been that the state line ran up Slick Rock creek.

And further the deponent sayeth not.

S. WHITAKER.

Subscribed and sworn to before me this 17th day of June, 1898.
J. W. FLETCHER, *Com.*

Compl't excepts to all statements of the witness Stephen Whitaker as to conversations had by him with David Taylor, Thos. Tatham and J. W. C. Piercy and also as to the general understanding in the neighborhood upon the ground that the same are incompetent.

WEBB & McCLUNG, *Sol's.*

S. Whitaker 1 day's attendance. Filed June 20, 1898. J. T. Carter, deputy clerk.

The foregoing depositions were taken before me as stated in the caption and reduced to writing by me and I certify that I am not interested in the cause nor of kin or counsel to either of the parties and that I sealed them up and put them in the post-office at Murphy, N. C., without being out of my possession or altered after they were taken.

Given under my hand this 17th day of June, 1898.

J. W. FLETCHER,
Commissioner.

Commissioner's costs paid by Lucky, Sanford & Tyson $7.00, all other costs of these depositions paid by Lucky, Sanford & Tyson, including attendance and mileage of witnesses.

J. W. FLETCHER, *Com.*

The foregoing depositions of James Whitaker, John Dockery, Jas. McDaniel, W. P. Phillips, W. P. Jones, M. L. Brittain and Stephen Whitaker, are excepted to by complainant upon the grounds
1276 that no sufficient notices was given to compl't or his solicitor of the taking of the same. This June 22, 1898.

T. E. H. McCROSKEY.
WEBB & McCLUNG,
Sol's for Compl't.

The foregoing exceptions are overruled by the clerk, this June 23, 1898. J. T. Carter, deputy clerk.

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Depositions of James McDaniel, John Dockery, M. L. Brittain, James Whitaker, W. P. Jones, W. P. Phillips, and S. Whitaker. Filed June 20, 1898. J. T. Carter, deputy clerk.

1277 In the United States Circuit Court, at Knoxville.

In Equity.

CHAS. HEBARD
vs.
D. W. BELDING et al.

Deposition of C. C. Jones, witness for defendants, taken by consent June 8th, 1898, at the offices of Lucky, Sanford & Tyson, in Knoxville, Tennessee, in the presence of T. S. Webb, solicitor for complainant, and counsel for defendants, except J. W. Cooper.

Said witness, C. C. JONES, being duly sworn, deposes as follows:

Q. 1. State your age, residence and occupation.
A. 60 years old, Citico, Monroe county, Tennessee; farmer.

Q. 2. How long have you been living at your present residence?
A. About 30 years.
Q. 3. How far is your residence from the lands in dispute in this case, which are on the waters of Slick Rock creek?
A. About 21 or 22 miles.
Q. 4. Have you been familiar with said lands in general during said time?
A. Yes, sir.
Q. 5. Were you acquainted with one Thomas Hensley?
A. Have known him for the same length of time, 30 years.
Q. 6. Is he now dead?
A. Yes, sir; he is dead.

1278 Q. 7. State if you ever had any conversation with the said Hensley in his lifetime in reference to the survey of the eastern line of Ocoee district in 1836-36, and state what he said about same, that is with reference to the eastern line in the neighborhood of Slick Rock creek in reference to the state line.

A. Yes, sir. He said that in running the state line, when the commissioners came to the river, they went down the river and across and then went up the river to the mouth of Slick Rock creek and then ran up Slick Rock creek.
Q. 8. You mean the commissioners who ran the state line in 1821?
A. Yes, sir.
Q. 9. Now state what he said in reference to being one of the party who ran the east line of Ocoee District?
A. He said he knew the parties and was with the party some of the time, and that they went to the mouth of Slick Rock creek and stopped at the mouth of Slick Rock creek.
Q. 10. Did he say why they surveyed Slick Rock creek as the eastern line of the Ocoee District?
A. Said it was the state line.
Q. 11. Did he state the reason why they stopped at Slick Rock creek?
A. Said they stopped there because it was the state line.

(T. S. Webb, solicitor for complainant objects to the foregoing questions and answers as statements made by Thos. Hensley, for the reasons, 1st, that said testimony is hearsay and not competent for the purposes in this cause; 2nd, it is not shown that Thos. Hensley ran the state line in 1821 or that he knew where said *said* state line was in connection with the running of same.")

Q. 12. What has been your understanding as to the location of the state line between Tennessee and North Carolina?
A. I always understood it run up that way.

(The foregoing question and answer as to the understanding of the witness as to reputation of state line, is objected to because incompetent.)

Q. 13. Do you know what has been the general understanding in reference to the location of the state line?

A. The general understanding by parties I know that lived on both sides of the line, was that it ran up Slick Rock creek.

Q. 14. How long can you remember that that has been the general understanding?

A. I was up in North Carolina about 25 years ago and from that time on until now.

1279 Q. 15. Do you know one John Deputy, Sr.?

A. Yes, sir.

Q. 16. About how old a man is he now?

A. He must be near 75 or 80.

Q. 17. Did he formerly live in Tennessee?

A. Yes, sir.

Q. 18. Where?

A. On Citico creek.

Q. 19. How far from you?

A. From 8 to 10 miles.

Q. 20. Were you well acquainted with him?

A. Knew him well.

Q. 21. Did he leave that part of the country some years ago?

A. Yes, sir.

Q. 22. About how long?

A. Must be something like 15 or 16 years ago; am not positive as to exact time, but at least that.

Q. 23. Do you know the reason why he left?

A. Yes, sir.

Q. 24. Please state it?

A. He left on account of his conduct in several ways, towards his wife, beating her; falling out with his neighbors, knocking one of them in head with a gun, and for violation of the Internal Revenue Laws.

Q. 25. Before he left did he state to you where he was going and the reason?

A. Yes, sir.

Q. 26. What did he say?

A. Said he was going to North Carolina across the line, so that the officers of Tennessee could not reach him.

Q. 27. Where did he go after he left?

A. I suppose he went to North Carolina. He told me afterwards that he was living in North Carolina.

Q. 28. When was it when he told you he was living in North Carolina?

A. It was after he moved there.

Q. 29. Did he ever state to you since then that he has been living in North Carolina?

A. He told me since he moved there, that he was living in North Carolina.

Q. 30. Do you know whether he was living on the east bank of Slick Rock creek?

A. I do not know.

Q. 31. What was the general understanding in the neighborhood as to where John Deputy was living?

1280 (Foregoing question objected to because hearsay and incompetent.)

A. North Carolina.

Q. 32. Were you acquainted with Deputy's general reputation and character in the neighborhood? Was it good or bad?

A. Bad.

Q. 33. From that general reputation and character, would he be entitled to full faith and credit on oath?

A. I think not.

Q. 34. When did Hendley die and how old a man was he?

A. He died two years ago. He must have been near 90 years of age: it is my impression that he was a man of 55 or 60 when I first knew him 30 years ago.

Q. 35. When, if ever, did you first hear the claim that the state line ran up Hangover?

A. I have heard it talked about. I heard it two or three years ago.

Q. 36. Are you familiar with the writing of T. E. H. McCroskey, one of the solicitors of complainant in this cause?

A. I have had a great deal of correspondence with him.

Q. 37. I wish you would please examine the deed from S. P. Evans, clerk and master, to E. T. Gratz, dated December 19, 1887, and deed from A. B. McCorkle, ——— Kline, to William Fleming and others, dated August 20, 1886, original deeds which are here shown you and state whether or not the body of said deeds are in the handwriting of Mr. McCroskey, being deeds which are filed as exhibits to the deposition of Mr. McCroskey in this case?

A. I would take it to be his hand-writing?

Q. 38. Both of them?

A. Yes, sir.

Cross-examination by T. S. WEBB, solicitor, for complainant

Q. 1. Mr. Jones, where did you live before you moved to Citico?

A. I lived across the river on the Henley estate, the first two years after I came to Tennessee?

Q. 2. Where did you come from to Tennessee?

A. South Carolina.

Q. 3. Have you ever been on the property in dispute on Hangover?

A. I have hunted up and down Slick Rock creek.

Q. 4. How often?

1281 A. I stayed one week up there once hunting and camping.

Q. 5. When was this?

A. That must have been 15 or may be 20 years ago.

Q. 6. Was Deputy living there at that time?

A. He was living in Citico creek.

Q. 7. Have you ever owned any lands in the disputed territory or had any interest in any lands there?

A. None whatever.

Further saith not.

C. C. JONES.

Sworn to and subscribed before me, this June 8th, 1898.

[SEAL.] E. H. KUNTZ,
Notary Public in and for Knox County, Tennessee.

47 miles *at* 2 days' attendance paid by Lucky, Sanford & Tyson.

(Endorsed:) Chas. Hebard vs. D. W. Belding et al. Deposition of C. C. Jones. Filed June 20, 1898. J. T. Carter, deputy clerk.

1282 In the United States Circuit Court of Knox County, Tennessee.

CHAS. HEBARD
vs.
D. W. BELDING et al.

Deposition of R. B. Mashburn, witness for the defendants in the above entitled case, taken by consent at the offices of Lucky, Sanford & Tyson, Knoxville, Tennessee, at 2 p. m. Sept. 6th, 1898, in the presence of T. S. Webb, solicitor for the complainant, and of Edward T. T. Sanford, solicitor for all the defendants except the Coopers.

Said witness, R. B. MASHBURN, of lawful age, being duly sworn, deposes as follows:

Q. What is your age and where do you live?
A. R. B. Mashburn: live in Moore county, middle Tennessee.
Q. At what place.
A. Ridgeville.
Q. What is your age?
A. 64 years.
Q. What is your business?
A. I have none now: my hands are so crippled from rheumatism that I can not work. I have an interest in a store; am a partner but do not do anything.
Q. Did you ever live on Tallassee creek, Monroe county, Tennessee?
A. Yes, sir.
Q. How far did you live from the mouth of the creek?
A. About three miles I think.
Q. How far is the mouth of Tallassee creek from the mouth of Slick Rock creek?
1283 A. About 6 or 8 miles. I was not along the river, it was 6 or 8 miles from where I lived across the mountain to Slick Rock Creek.
Q. When did you live there and for how long?
A. From my first recollection, when I was a little kid. I remember getting my lip cut when my father built a new house.
Q. How long did you stay there? Some years?

A. Two or three years.

Q. Where did you then move?

A. Moved about two miles from there to what is called the mountain settlement, it was then called the Phillips place, about two miles further away from Slick Rock creek.

Q. How long did you stay there?

A. Two years.

Q. Then where did you move?

A. Moved to Citico creek.

Q. How far was that from Slick Rock creek?

A. About 16 miles.

Q. How long did you live there on Citico creek?

A. I lived there until the spring 1860.

Q. Where did you then move?

A. To where I now live.

Q. Been living there ever since?

A. Yes.

Q. Do you know where the state line between Tennessee and North Carolina runs in the neighborhood of Slick Rock creek?

A. Yes, it runs up Slick Rock Creek.

Q. How far did it run up it and how did it go after it left it?

A. I do not know the distance, but it ran up the creek to a spur that ran up to the top of the mountain just beyond the Big Fodder Stack and then up that spur.

Q. Then how did it run?

A. It cornered there and ran along the Fodder Stack ridge through what we called Jeffers' Hall and along the ridge that divides the waters of Citico and the waters of Slick Rock creek and then turned again to the right. I have been nearly to Georgia on it.

Q. As I understand you then, the line began at the river and ran up Slick Rock creek to the spur that ran up to the Big Fodder Stack and ran up the spur to the Big Fodder Stack and along that to the junction with the Hangover, and on further south.

A. Yes.

Q. How did you know where the state line ran?

1284 A. My pa told me and showed me where it was.

Q. What was your father's name?

A. Levi Mashburn.

Q. Did your father ever tell you anything about being on the survey in running the state line?

A. He told me that he was with the party that surveyed the line.

Q. The state line?

A. Yes, sir.

Q. Did your father tell you how the state line ran?

A. Yes, he told me it ran up Slick Rock creek when we were camped on it. We camped several times on Slick Rock creek.

Q. Did he tell you it ran as you have described it above?

A. Yes, sir.

Q. Did you get your description of this line as running up the spur and along from your father?

A. Yes, I got it from him.

Q. How many times, according to your best recollection, did he tell you about this line, and how would he happen to tell you?

A. I can not tell how many times, but we have camped time and again on Slick Rock creek. I have been bee hunting and deer hunting time and again all over the country; I can not tell how many times and when he had crossed the creek he would say: "Son we are in North Carolina now." That was when we were hunting he told me about the line and there were marked trees on the line. Sometimes it is my recollection, it was on one side of the creek and sometimes on the other it was a little narrow creek and a man could not always get up on one side all the way.

Q. And your father would tell you, as I understand it, when you had crossed the creek you had gotten into North Carolina?

A. Yes, sir.

Q. Did your father point out any marked trees to you on the creek?

A. Yes, he showed me some.

Q. These trees were on the creek?

A. Yes, on Slick Rock Creek.

Q. Do you know how far from the mouth of the creek?

A. No, I do not. One place was where an old Indian trail crossed but I do not remember how far, and another was where another Indian trail crossed still above there, the two places were about a mile apart.

1285 Q. Was one of these the old Tallassee trail?

A. Yes, one was the Tallassee trail.

Q. And when you camped at different times where these trails crossed the creek, he showed you the marked tree?

A. Yes.

Q. Did he tell you what these trees were marked for?

A. He said it was the line between Tennessee and North Carolina.

Q. Do you remember what the state line mark was?

A. My recollection is that it is two hacks and a blaze on center trees and three hacks on a side line tree, but I may be mistaken but I think this is it; it is over forty years since I saw it.

Q. The center trees would be marked on one side or both?

A. Both sides.

Q. Is your father living?

A. No, he has been dead for years; died in 1848.

Q. Did anyone else ever tell you where the state line was in this territory?

A. Yes, my father-in-law, Clinton Hudson.

Q. Where did you- father-in-law live?

A. In Cherokee county, North Carolina.

Q. About how far from Slick Rock creek?

A. Three or four miles, right under the Hangover in a little cove of a creek that heads there and runs down to the Tennessee river.

Q. Were you ever with your father-in-law on Slick Rock Creek?

A. Yes, many a time, when he was going down to Tennessee and I was with him, and we have hunted many a time and camped on

the creek. I have camped there so many times I can't tell how many.

Q. Did he ever tell you about the state line?

A. He told me it ran up Slick Rock.

Q. Did he ever point out marked state line trees to you?

A. Yes, sir.

Q. Were they marked the same or different from the marked trees that your father had pointed out to you?

A. Just the same.

Q. They were on the creek and he told you they were state line trees?

A. Yes.

Q. Did you ever go with your father up on that spur you spoke of as running from the creek to the Big Fodder Stack?

1286 A. I went with him to the top of the Fodder Stack, we camped there by a little spring and hunted, but I never went up the spur with him and he never pointed out any marked trees on the spur, but I have been up there myself many a time since.

Q. Did you ever go up that spur since looking for marked state line trees?

A. Yes, sir.

Q. Did you find any?

A. Yes, sir.

Q. Mr. Mashburn, please state when it was that you went up on that spur looking for state line marks, how you happened to go and whether or not you found any state line marks?

A. It was in 1854, after the Ducktown copper mines were found, I went into a company of seven besides myself and we went to Ducktown and followed the appearance as good as we could and found all the Tennessee land had been taken up, so we traced the appearance of the copper until it went into North Carolina, where we entered 640 acres on the far side of the Big Fodder Stack and dug for copper.

Q. As I understand it, you found this trace of the copper ore, and went up and down the spur to find the state line so as to know in what state to enter it?

A. Yes, sir, we traced it into North Carolina and entered it in that side.

Q. Where were these copper indications?

A. Just beyond the Big Fodder Stack; between the Big Fodder Stack and the Hangover.

Q. Just where was this?

A. Just over on the side of the spur that the state line runs down toward the head of Slick Rock.

Q. Did you go down this spur at this time?

A. Yes, we went up and down several times.

Q. Did you find any trees on this spur with the state line mark?

A. Yes, sir.

Q. How many?

A. I do not know; several.

Q. Did they have the same kind of marks as the trees your father had pointed out to you as state line trees?

A. Yes.

Q. State whether or not in consequence of these state line marks you made your entry in North Carolina.

A. Yes, we made it in North Carolina.

Q. In whose name was this entry made?

A. W. H. Maroney. I have receipts from him for two payments I made; I have lost the others.

1287 Q. Will you please file these receipts as exhibits "A" and "B" to your deposition?

A. I will.

Q. What became of that land you were interested in? How did it happen that you lost sight of it?

A. There came along a New York Mining Co. while we were there digging and wanted to buy it. I wanted to sell, but the others did not, and we leased it to that New York Co. for five years. Before the lease expired the war broke out and I moved away to where I live now, and have never been back since to see about it.

Q. Did you ever make any inquiries?

A. I wrote three or four letters just after the war, but never heard anything of it. I was broke up so bad I could not go to see about it.

Q. Is your father-in-law dead?

A. Yes, sir.

Q. When did he die?

A. I do not know; I only heard he was dead.

Q. When you were living in that section of the country, what was the general understanding in the community as to where the state line ran?

A. Where I said it ran; never heard of its running anywhere else. That was the general understanding.

The counsel excepts to all the foregoing questions and to the answers of the witness relating to conversations between the witness and his father and between the witness and his father-in-law as incompetent for the purpose of establishing the state line.

T. S. WEBB,
Solicitor for Complainant.

Cross-examination by Major WEBB:

Q. In what year were you born?

A. In 1834; June 25th.

Q. You have stated that your father died in 1848?

A. Yes, sir.

Q. Then you were about fourteen years old when he died?

A. Yes.

Q. And the conversations you have had with him about which you have testified occurred about how long before his death?

A. About two years the last one was.

Q. Then at the time of your last conversation with him about the state line you were twelve years old?

A. Yes, about that old.

Q. Was that country thickly settled or not when you lived

?

In the Slick Rock there was a man by the name of Frank ols lived, and beyond there where my father-in-law lived there a man by the name of Bob Strutton, and this side in what we d the "Puncheon Camp" there were some persons, and that was here was living there at that time in the country.

As I understand from your testimony, your father-in-law lived he east side of the Hangover; that is on the far side from here?

No, he lived facing the river; between it and the Hangover.

And the creek he lived on ran towards North Carolina?

No, it ran the way Slick Roc': creek ran; both ran in the same tion.

The creek that he lived on did not run into Slick Rock?

No, it is independent.

How far above the mouth of Slick Rock creek does the creek father-in-law lived on empty into the river?

I don't know; I never was up the river any farther than where Indian trail crosses it.

In crossing over from Slick Rock creek to your father-in-law's crossed the Hangover lead to get to his house, didn't you?

No, the highest part of the Hangover is just beyond his house.

Did the creek that he lived on run down the same side of the ntain as Slick Rock, or on the other side?

It ran down right from the end of the Hangover; we always the Hangover stopped where it dropped down.

If you were on the top of the mountain where the Hangover the Big Fodder Stack come together and you were going towards river along the top of the mountain then Slick Rock creek would n your left wouldn't it?

Yes, sir, and the other creek would be right in front of me, a to the left.

When did your father-in-law die?

I do not know.

Did he die after you moved to Middle Tennessee, or before?

He died after I moved there.

Q. How old were you when you were married?

A. I lacked from April to June 25th, of being 21 years old.

Q. You have stated in the direct examination that the eral reputation in that settlement was that the state line ran up k Rock Creek. Please give the names of any other persons be- s your father and father-in-law whom you have heard say that state line so ran?

Robert Ballew, a Baptist preacher.

Have you heard any others?

John Harrison.

Any other?

Mike Harrison.

Any others?

Calve. Harrison.

Q. Any others?
A. Jack Milligan, he lived on Tallassee creek.
Q. Who else?
A. Frank Milligan.
Q. Who else?
A. Joe Milligan.
Q. Who else?
A. I don't recollect any one else just now.
Q. Where did Robert Ballew live?
A. He lived on a creek called Tocoah Creek.
Q. Did he live in Tennessee or North Carolina.
A. In Tennessee.
Q. Was it before you moved to middle Tennessee that you heard him say the line ran so?
A. Yes, it was before I moved.
Q. Where did the Milligan's live?
A. On Tallassee Creek in Tennessee, old man Milligan lived at the mouth of Tallassee Creek.
Q. Where did the Harrisons live?
A. In Tennessee, in Monroe County, right below the mouth of the Creek called Mulberry.
Q. Have you ever been back to that neighborhood since you left it in 1860?
A. I was back there during the war, in 1862, just to stay all night. I have also heard G. W. Morgan a part Indian, say that the line ran up Slick Rock Creek.
Q. Where did he live?
A. On Citico Creek.
Q. When was your father born?
A. Feb. 17th, 1803.
Q. How old was he at the time the line was run? He was not one of the commissioners was he?
A. I suppose not, he never said anything about it; just said he was with the party.
1290 Q. Did he state when it was run?
A. No, sir, he did not.
Q. Have you ever been at the place where the Hangover mountain comes down to the river?
A. Never in my life. I never was on the Tennessee river from where Tallassee Creek comes down to where Slick Rock Creek comes in above there. I have been up and down many a time on the old Tallassee trail, on the south side of the river, and the road on the other side.
Q. Then you do not know where the Hangover lead comes down to the river?
A. We always said that when the Hangover gave out it gave out and the highest part goes to the North Carolina side.
Q. Where does this highest part, which you say goes to North Carolina reach the river?
A. I do not know; it may strike the Cheowah river, but I do not know, I was never there.

Q. At what point does this highest part of the mountain that you peak -- turn off toward North Carolina?

A. About half a mile from the very Hangover.

Q. This place where this mountain that turns off into N. C. turns f from the main ridge is the head of Slick Rock Creek?

A. It is just opposite the head of Slick Rock Creek.

Q. How far is this point where this mountain turns off toward . C. from the Tennessee River?

A. I do not know; I never was there.

Q. Is it 6 or 8 miles?

A. Not so far.

Q. 5 or 6?

A. Yes, perhaps. I do not know, but that is nearly it.

Q. Mr. Mashburn, how long have you known Mr. E. P. McQueen?

A. The first time I ever saw him or heard of him was at the Democratic Convention at Chattanooga.

Q. When was that?

A. In June of this year.

Q. Did you then tell him what you knew about Slick Rock Creek nd the state line?

A. Yes.

Q. How did you happen to tell him?

A. In the convention I saw the Louden County sign and I went o it and Mr. McQueen and one or two others were there. I asked hem if they were from Louden County and he said yes. I said I ad come to see if I could see any of my old acquaintances there in he delegation or could hear of them. Then he got to talking with me about that county and asked me if I had ever lived there.

291 I told him I was born and raised in Monroe County, near the river. He asked me where and I told him on the Tallassee Creek. He began asking me questions about it and that is how I ame to tell him.

Q. Where was your father born, Mr. Mashburn?

A. I do not know.

Q. In Tennessee or North Carolina?

A. I do not know where he was born.

Q. You say this creek that your father-in-law lived on, ran down etween the mountain that turned off toward N. C. and Slick Rock Creek?

A. Yes.

Q. Do you know the place on the Hangover called Sourwood Gap?

A. No, sir.

Q. How far was your father-in-law's place from where you crossed Slick Rock Creek in going over there?

A. About four miles, I suppose. We struck the creek something like a mile below where he lived and then had to go up the creek.

Q. In crossing over to his house this mountain which you say turned off toward N. C. was on your right was it not?

A. It was right in front of me.

Q. In going over to his house from your place what you call the Hangover was on your right wasn't it?

A. Yes, sir.

Q. That place that you called the Hangover is the high point of the mountain where there is a cliff, isn't it?

A. Yes, it hung over facing the river.

Q. Now this mountain which you say turned off to N. C. turned right at this Hangover, did it not?

A. Just a little piece back from where it hung over.

Q. The place you call the Hangover was where the mountain hung over towards the river wasn't it; and the mountain that turned off into N. C. was back a little?

A. Just a little; it ran along in very nearly the same direction only a little variation.

Q. Did you state that this mountain that turned off into N. C. ran down in Cheoate River in North Carolina?

A. Never, I never knew where it went.

Q. In going to your father-in-law's house you would be on this side of that mountain, would you not, and next to the Tennessee River, or on the other side of it?

A. You would be on this side of that mountain.

Q. In going to your father-in-law's house you would be between the mountain and the Tennessee River?

1292 A. Between it and Slick Rock Creek.

Q. In what direction would the Tennessee River be from you at your father-in-law's house?

A. I do not recollect it has been so long, near forty years. I think it would be southeast.

Q. How old were you when you left East Tennessee?

A. 26 years old.

Q. When you talked with Mr. McQueen at Chattanooga in June last did you remember that the state line mark was two hacks and a blaze?

A. That was what I told him was my recollection.

Redirect examination:

Q. Did you tell him that it was two hacks and a blaze only, or two hacks and a blaze on center trees and three hacks on side line trees?

A. That is what I told him. I won't be positive, but that is what I told him. That is my recollection of the marks.

Q. How far was the mouth of Tallassee creek from the mouth of Tallassee Ford?

A. My recollection is that it is about a mile; I have forded it hundreds of times.

Q. As I understand you on cross-examination, after you left the junction of the Fodder Stack and the Hangover and went along the top of Hangover, when you came to that place where it hangs over towards the river with a cliff, you say that the name of Hangover stops, and you did not call it the Hangover any farther towards the river in either direction.

A. That is correct. The hunters in that country never call it the Hangover any farther.

Q. This Hangover place as I understand, was just over the head waters of Slick Rock Creek.

A. Right at the side of it.

Q. Then as I understand, the main ridge of the mountain ran along from this point in about the same direction, and you do not know where it went over into North Carolina?

A. No, sir, I do not know.

Q. Now, for near this point, as to the ridge that ran from near this point to the Tennessee River, coming in about half a mile or so above Slick Rock Creek, the ridge that you had to cross after you left Slick Rock Creek as you went over to your father-in-law's house; did you call that ridge the Hangover?

A. No, sir, we never called that the Hangover.

Q. But there was ridge there?

1293 A. Yes, there was ridge there.

Q. You have named on cross-examination various persons whom you have heard state that the state line ran up Slick Rock Creek. Are all of these persons now dead?

A. Yes, I do not know of but one alive; that is William Harrison he was living the last time I heard.

Q. Were any of these persons whom you have named, interested with you in the entry of copper land you spoke of?

A. There were six of them interested with me besides Maroney.

Q. Were these men Tennesseeans?

A. All Tennesseeans but Maroney and my father in-law.

Q. What did you have to pay for that entry in North Carolina?

A. Fifty cents per acre.

Q. To the North Carolina government.

A. Yes.

Q. Before you were married did you frequently go over to your father-in-law's house?

A. Yes, sir.

Q. And you would cross Slick Rock Creek on your way?

A. Yes, sir.

Re-cross Examination by T. S. Webb:

Q. These several men whom you have mentioned as telling you that the state line was on Slick Rock Creek; were they men who were engaged with you in the copper land?

A. Part of them.

Q. How many of them; did you say 7?

A. 7 besides myself.

Q. Was it at the time you were making the entry that you heard them say the line was on Slick Rock?

A. It was when there was so much talk about the copper ore, that I heard it; everybody was talking about the copper ore: it was general talk.

Q. When you would be going from your father-in-law's house from your house you stated that what you called the Hangover

would be on your right, and you would have to go past the Hangover?

A. No, not past it, his house was just about opposite it.

Q. What you call the Hangover is the hanging cliff of rock at the high point on the mountain and you do not call any other part of the mountain the Hangover?

A. No, nor anybody else, that I ever heard of.

1294 Re-re-direct examination:

Q. You have spoken of six men besides yourself; do you mean that 6 men besides yourself and Maroney were interested in this entry or that six of the men that you mentioned as stating that the line ran up Slick Rock Creek were interested with you?

A. Six of them were interested with me.

Q. Which ones of these men you have mentioned were interested in that entry?

A. None of the Milligans, nor the Indian, nor Strutton, nor Frank Nichols were interested in the entry.

Q. That is these men have stated to you that the state line ran up Slick Rock Creek and none of them were interested with you in the entry, but the others you have previously mentioned were interested with you, and were all Tennesseeans except the ones you mentioned, Maroney and your father-in-law?

A. Yes, sir. One of the Harrisons was not interested I think.

And further deponent saith not.

R. B. MASHBURN.

Subscribed and sworn to before me this 7th day of Sept., 1898.
HENRY O. EWING, *Clerk.*

Bill of Costs.

R. B. Mashburn, mileage, 00 miles each day	10 00
Attendance one day	1 50
Total	$11 50

Paid by Lucky, Sanford & Tyson.

Formal caption, certificate and transmission waived and all exception as to competency, relevancy and materiality of the foregoing matters specifically reserved to the hearing.

(Endorsed:) No. 1056. Chas. Hebard vs. D. W. Belding, et al. Deposition of R. B. Mashburn. Filed Sept. 7th, 1898. Henry O. Ewing, Clerk.

1295 EXHIBIT A TO R. B. MASHBURN'S DEPOSITION.

— December 10, 1855, of Robert Mashburn, ten dollars by R. B. Billins, which is in payment of 640 acres entered by W. H. Maroney, in Cherokee County, N. C., on the waters of Slick Rock Creek at 50c. per acre this being his part of the first payment due Dec. 20, 1855.

W. H. MARONEY,

EXHIBIT B TO R. B. MASHBURN'S DEPOSITION.

Received of Robert B. Mashburn in full of second payment, ten dollars on 640 acres of land lying on Slick Rock Creek, in Cherokee Co., N. C., Jan. 9, 1857.

W. H. MARONEY.

J. S. MARONEY, *Agent.*

CHAS. HEBARD.
vs.
D. W. BELDING et als.

This cause is referred back to T. A. Wright, Esq., heretofore appointed Special Commissioner in this cause, who will examine the proof taken by the parties since said commissioner's report was filed, and hear argument thereon, if desired and he will report whether upon said proof he will change his report already filed, and if so to what extent. He will make his report as soon as practicable. Exceptions to the original report may be reserved until after the coming in of the supplemental report.

O. K.

WEBB & McCLUNG.
LUCKY, SANFORD & TYSON.

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Order of re-reference Entd. Journal "Q" p. 569. Filed 13 day of Sept., 1898. J. T. Carter, Deputy Clerk.

1296 EXHIBIT 9 TO DEPOSITION OF H. P. HYDE.

No. 8234.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of — dollars and — cents, paid into the treasury by W. H. Thomas, have given and granted and by these presents do give and grant unto

W. H. Thomas a tract of land containing two thousand (2000) acres, lying and being in the county of Cherokee, it being part of the land lately acquired by treaty from the Cherokee Indians, and bounded as follows, viz.: On the Cheoah and Tennessee river:

Beginning on a small spruce pine on the state line at the mouth of Slick Rock creek, and about 1 pole N. E. of the corner of No. 611, and runs with the state line south 25 east 221 poles to a corner of said No.;

Then with that line north 65 degrees east 220 poles to a corner of No. 405;

Thence with its line south 53 west crossing the Tallassa Ford at 9 onts and 6 links, 208 poles to a black oak on said line;

Then south 10 west 74 poles to a chestnut;

Then south 24 poles to a pine;

Then south 45 west 46 poles to a white oak, Devil's Bear creek and Slick rock;

Then S. 15 W. 116 poles to 5 chestnuts;

Then south 20 east 234 poles to a chestnut on the top of a ridge;

Then north 65 east 194 poles to a forked black oak;

Then north 85 east 40 poles to a chestnut oak;

Then south 60 east crossing Bear creek at 104 poles and crossing the left hand fork at 120 poles and crossing the old Tolopa trail at 180 poles, 640 poles to a white oak in a cove;

Then north 70 east crossing the ford at 19 onts and 2 pins, 140 poles to a maple;

Then north 15 east 104 poles to a spruce pine;

Then north 35 west 40 poles to a chestnut oak on the bank of Cheoah river;

Then down the river north 20 east to a ford and pointers on the bank of said river, and on the line of No. 1727;

Then south 45 west 120 poles to a black oak, corner of said No. and the southwest corner of No. 1724;

Then with that line north 45 west 452 poles to a corner of No. 614;

Then with that line north 25 east 220 poles to a corner of said No.

1297 Then with that line south 65 west 220 poles to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines minerals, hereditaments and appurtenances to the said party belonging or appertaining, to hold to the said Wiliam H. Thomas, heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our general assembly from time to time may direct, and promising obedience to all acts of the general assembly of this state now existing or hereafter to be enacted, concerning the passage of fish in the waters of said premises.

Entered 1st June, 1853.

In witness whereof we have caused these our letters to be made patent, and our great seal to be hereunto affixed.

Witness Alfred M. Scales, Esq., our Governor and Commander in Chief at Raleigh, the 1st day of December, in the one hundred and

twelfth year of our independence, and in the year of our Lord one thousand eight hundred and eighty seven.

A. M. SCALES, *Governor.*

By Command:

[L. S.] W. L. SAUNDERS,
Secretary of State.

Recorded and registered March 2nd, 1899.

W. F. MANNEY,
Reg. of Deeds.

STATE OF NORTH CAROLINA,
Graham County:

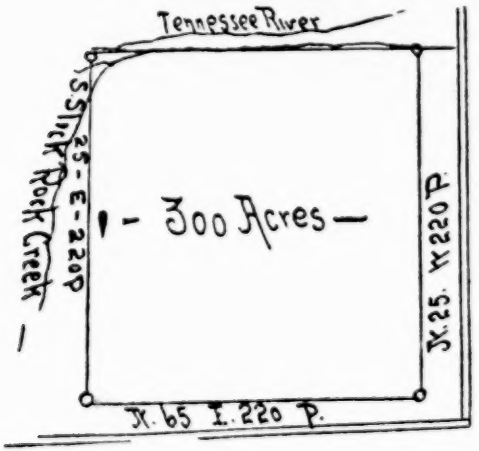
I do hereby certify that this is a true copy of Grant No. 8234, as recorded in my office. Witness my hand and official seal, this Sept. 24th, 1897.

[SEAL.] J. A. HYDE,
Reg. of Deeds.

Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk.

1298 EXHIBIT No. 11 TO DEPOSITION OF H. P. HYDE.

Scale 100 Poles per Inch.



STATE OF NORTH CAROLINA,
Graham County:

In pursuance to a warrant No. 418, issuing from the entry taker of said county, I have surveyed for James W. Cooper a certain tract of land lying in said county on the waters of said river and Slick Rock Creek, in District No. 10—

Beginning on a stake and small black gum at the mouth of said creek, on the south of Tennessee river, and west bank of said creek, about 1 pole west from a small spruce pine, corner of tract No. 920, on the state line, and runs south 25 degrees east 220 poles to a stake;

Thence N. 65 east two hundred and twenty poles to a stake;

Thence north 25 west two hundred and twenty poles to a stake on the south bank of said river;

Thence down said river with its meanders to the beginning.

Containing three hundred acres more or less, surveyed June the 18th. A. D. 1883.

H. P. HYDE, *C. S.*

C. C., JOHN C. HYDE &
WM. B. GIBSON.
HYDE, *Mark.*

1299 No. 144.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of thirty-seven (37) dollars and fifty (50) cents paid into the treasury by James W. Cooper, have given and granted and by these presents do give and grant unto James W. Cooper a tract of land containing three hundred acres (300), lying and being in the county of Graham, Section No. —, in District No. 10, warrant No. 418, it being part of the land lately acquired by a treaty from the Cherokee Indians and sold in obedience to an act of the general assembly of this state, bounded as follows, on Tennessee river and Slick Rock creek:

Beginning on a stake and small black gum at the mouth of said creek on the south side of said river and west bank of said creek about 1 pole W. from a small spruce pine, corner of No. 920 on the state line and runs S. 25 degrees E. 220 poles to a stake;

Thence N. 65 degrees E. 220 poles to a stake;

Thence N. 25 degrees W. 220 poles to a stake on the south bank of said river;

Thence down said river with its meanders to the beginning.

As by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances, to the said land belonging or appertaining, to hold to the said James W. Cooper, heirs and assigns forever: Yielding and paying to us such sums of money yearly or otherwise as our general assembly from time to time may direct, and promising obedience to all acts of the general assembly now existing, or hereafter to be enacted concerning the passage of fish in the waters of the said premises: Provided, always, That the said grantee shall cause this grant to be registered in the register's office of our said county of Graham within two years from the date hereof, otherwise the same shall be void.

Entered 22 March, 1883.

In testimony whereof, we have caused these our letters to be made patent, and our great seal to be hereunto affixed.

Witness Thomas J. Jarvis, Esq., our governor and commander in chief, at Raleigh, the 22 day of August, in the one hundred and ninth year of our independence, and in the year of our
1300 Lord one thousand eight hundred and eighty-four.

[Great Seal of the State of North Carolina.]

THOMAS J. JARVIS, *Gov.*

By Command:
W. L. SAUNDERS,
Secretary of State.

The within grant came to hand and was duly registered in the register's office of Graham county, North Carolina, Book "D" of Deeds, page 281, this 24th Dec., 1885.

W. F. MAUNEY,
Register of Deeds.

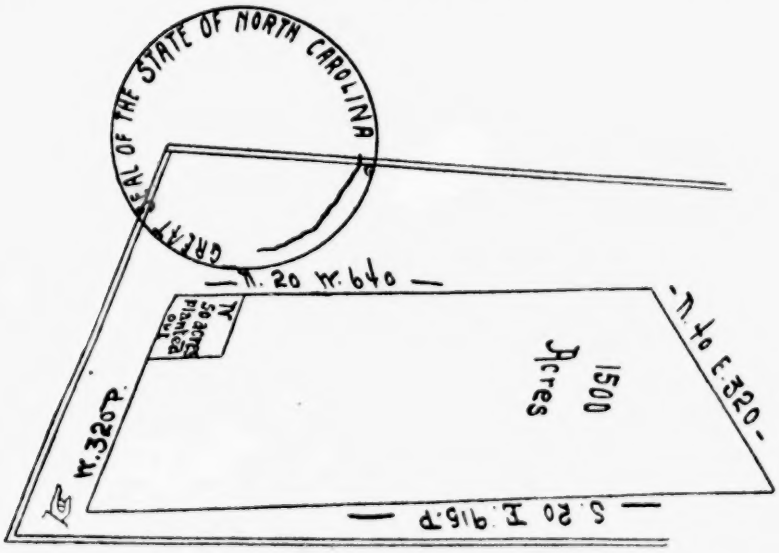
Recorded in the office of the secretary of state, in Book 174 on page 204.

W. L. SAUNDERS,
Secretary of State.

Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk. Exhibit No. 11 to the deposition of H. P. Hyde.

EXHIBIT NO. 12 TO DEP. OF H. P. HYDE.

Scale 200 poles per Inch.



1301 STATE OF N. CAROLINA,
Cherokee County:

By virtue of a warrant, No. 4455, issuing from the entry taker of said county, I have surveyed for A. N. Colvard & Co., a certain tract of land lying in said county on the waters of Santeatly creek in District No. 10, beginning on a stake and cucumber on the N. bank of Santeatly creek near an old trail, and runs W. three hundred and twenty poles to a buckeye, then N. 20 W. six hundred and forty poles passing two farmer corners to a mountain oak; then north 40 E. three hundred and twenty poles to a Spanish oak on the top of the mountain; then S. 20 E. nine hundred and fifteen poles to the beginning; containing one thousand five hundred acres more or less, surveyed April 11th, 1856.

J. W. C. PIERSY, *S.*

C. B., JASPER ROGERS.
WM. CARINGER.
C. A. COLVARD, *M.*

No. 2969.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of eighty-seven dollars and 35 cents, paid into our treasury by S. W. Gilbert and W. H. Peet, have given and granted, and by these presents do give and grant unto S. W. Gilbert and W. H. Peet a tract of land containing one thousand five hundred acres, lying and being in the county of Cherokee, Section No. —, in District No. ten, it being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the general assembly of this state, bounded as follows, viz.: On the waters of Santeatly creek, beginning on a stake and cucumber on the north bank of Santeatley creek near an old trail and runs west three hundred and twenty poles to a buckeye; then north twenty west six hundred and forty poles passing two farmers' corners to a mountain oak; then N. 40 E. 320 poles to a Spanish oak on top of a mountain; then south twenty east nine hundred and fifteen poles to the beginning. Entered 29th December, 1854.

As by the plat hereunto annexed doth appear; together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining; to hold to the said S. W. Gilbert and W. H. Peet, their heirs and assigns forever. Yielding and paying to us such sums of money, yearly or otherwise, as our general assembly from time to time may direct; provided, always, that the said grantee shall cause this grant to be registered
1302 in the register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof, we have caused these our letters to be made patent, and our great seal to be hereunto affixed.

Witness, John W. Ellis, Esq., our governor, captain general and

commander in chief, at Raleigh, the 3rd day of November, in the 85th year of our independence and in the year of our Lord, one thousand eight hundred and sixty.

JOHN W. ELLIS.

By Command:
RUFUS H. PAGE,
Secretary of State.

No. 2969.

L. W. Gilbert and W. H. Peet, 1,500 acres, Cherokee County. Recorded in the secretary's office.

RUFUS H. PAGE, *Secretary.*

The within deed was registered in Book I, page 113, Jan'y 17th, 1862.

B. S. BRITTAIN, *Rec.*
S. V. BRITTAIN, *Dept. Rec.*

The within grant was duly registered in the register's office of Graham Co., N. C., in Book "H," on page 485, on this Nov. 20th, 1896.

W. F. MANNY,
Reg. of Deeds.

Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk. Exhibit No. 12 to deposition of H. P. Hyde.

EXHIBIT NO. 13 TO DEPOSITION OF H. P. HYDE.

J. M. Lyle. No. 445. Entered 640 Acres Mar. 23d, 1853.

John M. Lyle, enteres six hundred and forty acres of land in the county of Cherokee, and state of North Carolina, on the waters of Tennessee river beginning at a stake on the line which divides the states of North Carolina and Tennessee at or near Slick Rock creek, 340 rods above the place where the old Indian trail leading from Tallassee old town in the state of Tennessee, to Cheoah,
1303 in North Carolina, crosses said state line; thence with said state line up the creek and various courses for complement.
Mar. 23d, 1853.
Wr. Isr. May 4, '53.

JOHN M. LYLE.

NORTH CAROLINA,
Cherokee County:

I, Thos. C. McDonald, register of deeds in and for the county and state aforesaid, do hereby certify that the above is a true copy of entry No. 445 entered by John M. Lyle, as appears on entry book one of the records of my office.

Given under my hand and seal of office, this 28th day of Sept., A. D. 1897.

[SEAL.] THOS. C. McDONALD,
Register of Deeds.

Exhibit No. 13 to deposition of H. P. Hyde. Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk.

And further deponent saith not.

H. P. HYDE.

Sworn to and subscribed before me, this Sept. 28th, 1897.

[J. T. Carter, U. S. Commissioner, Eastern District of Tenn.]

J. T. CARTER, *U. S. Com'r.*

Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk.

1304 No. 2784.

STATE OF NORTH CAROLINA:

Know ye, that for and in consideration of the sum of twenty-one dollars, 71 cents paid into our treasury by A. Siler have given and granted and by these presents do give and grant unto A. Siler a tract of land containing six hundred and forty acres, lying and being in the county of Cherokee, Section No. — in District No. —, it being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state; bounded as follows, viz.: On the waters of Tennessee river, beginning on a stake and spruce pine near the Panther Den on the state line and on the bank of Slick Rock creek and runs S. 53 degrees E. two hundred and twenty-seven poles to two black gums, then S. 25 degrees W. four hundred and fifty-two poles to a pine on the side of a mountain, then north 53 degrees West two hundred and twenty-seven poles to a white oak on the state line, then with said line and its meanders four hundred and fifty-two poles to the beginning. Entered 28th April, 1856, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said A. Siler, his heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always that the said grantee shall cause this grant to be registered in the register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

1305 In testimony whereof we have caused these our letters to be made patent and our great seal to be hereto affixed. Witness John W. Ellis, Esqr., our governor, captain general and commander

in chief at Raleigh the 24th day of January, in the eighty-third year of our Independence and in the year of our Lord, 1859.

JOHN W. ELLIS, *Gover.*

By command:
RUFUS H. PAGE.
Secretary of State.

The foregoing deed was registered in Book (H) page 675, March the 7th day, 1859.

B. S. BRITTAIN, *R. C. C.*

STATE OF NORTH CAROLINA,
Cherokee County:

I, Thomas C. McDonald, register of deeds of Cherokee county of the state of North Carolina, do hereby certify that the foregoing is a true and perfect copy of the grant No. 2784 to A. Siler as the same appears *on* book "H" page 675 of the records of my said office and of the certificate of the registration of the same.

Given under my hand and seal of office at office in Murphy, of Cherokee county aforesaid on this the 9th day of October, 1897.

[SEAL.] —— ——.

(Endorsed:) Grant No. 2784 to A. Siler, copy No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Bolding, et al. Filed Jun- 4, 1898. J. T. Carter, deputy clerk.

MURPHY, N. C., *May 4th*, 1853.

J. T. Turnbill. No. 611. Entered 300 Acres May 4th, 1853.

John J. Turnbill & Co., enters three hundred acres of land in Cherokee county, North Carolina; beginning at a stake on the bank of Tennessee river on the state line and the mouth of Slick Rock creek and running up said creek with said state line and various courses for complement.

May 4th, 1853.

JOHN J. TURNBILL.

Wt. Isud. May 17th. '53.

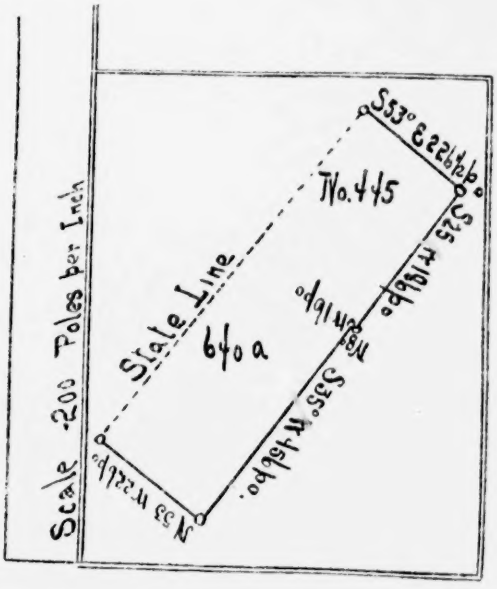
1306 NORTH CAROLINA,
Cherokee County:

I, Thos. C. McDonald, register of deeds and ex-officio entry taker in and for said county and state do hereby certify that the foregoing is a true copy of the entry by John J. Turnbill as appears on entry book of my office.

Given under my hand and seal at office this 9th day of Oct., 1897.

[SEAL.] THOS. C. McDONALD,
Register of Deeds and ex-Officio Entry Taker.

(Endorsed:) A copy of entry No. 611, J. J. Turnbill Entry No. 611 to be filed No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding et al. Copy of Entry No. 611. Filed Jun- 4, 1898. J. T. Carter, deputy clerk.



STATE OF NORTH CAROLINA,
Cherokee County:

By virtue of a warrant, No. 445 issuing from entry taker's office of said county and state, I have surveyed for J. M. Lyle, a tract of land in said county and state, beginning on a stake and spruce pine on the bank of Slick Rock Creek & on the state line and runs S. 53 degrees E. two hundred and twenty-six & one-half poles to
1307 two black gums, then S. 25 degrees W. one hundred & eighty-six poles to a maple on the side of a ridge, thence N. 80 degrees W. Sixteen poles to a black gum, thence S. 35 degrees W. four hundred & fifty-six poles a pine on the south side of a mountain, then N. 53 W. two hundred and twenty-six poles to a stake in the state line, then with said line four hundred and fifty-two poles to the beginning. Surveyed May 24th, 1853.

J. W. C. PIERCY, *C. S.*

S. E. TIPTON &
S. E. HUDSON,
C. B.
J. H. BRYSON, *Marker.*

STATE OF NORTH CAROLINA,
Cherokee County:

I, T. C. McDonald, register of deeds, do hereby certify that the foregoing is a true copy of the survey made of entry No. 445 in Cherokee county. Given under my hand and seal of Office of the 27th May, 1898.

T. C. McDONALD,
Regr. Deeds & Ex-Officio Entry Taker.

(Endorsed:) Plat & certificate of survey of entry, No. 455. No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Filed June 4, 1898. J. T. Carter, Deputy Clerk.

No. 101.

STATE OF NORTH CAROLINA:

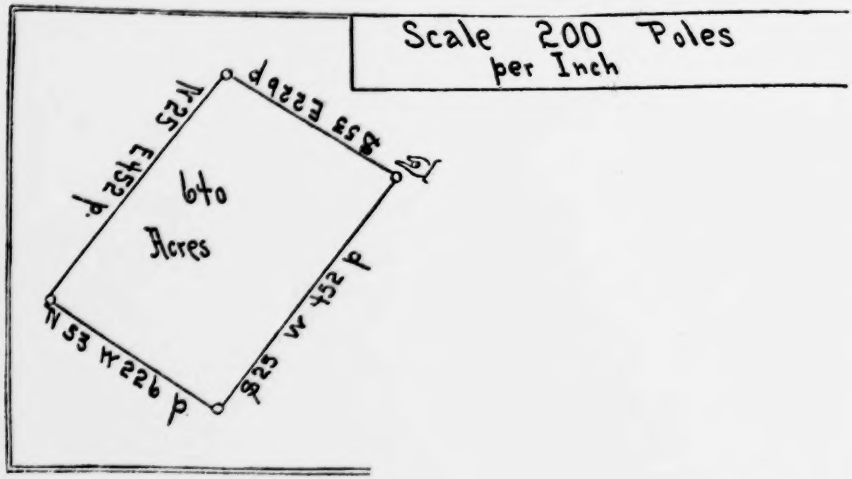
Know ye, that we, for and in consideration of the sum of eighty (80) dollars and —— cents paid into the treasury by J. W. Cooper, assignee, have given and granted and by these presents do give and grant unto J. W. Cooper, assignee, a tract of land containing six hundred and forty (640) acres, lying and being in the county of Graham (formerly Cherokee), Section No. —, in District No. —, warrant No. 479, it being part of the land lately acquired by a treaty from the Cherokee Indians, and sold in obedience to an act of the general assembly of this state, bounded as follows, viz.: On Slick Rock creek. Beginning on a stake and Pine tree the S. W. corner of No. 445 and runs S. 53 E. 226 poles to a stake, then N. 25 E. 452 poles to a stake, then N. 53 W. 226 poles to a black gum, the S. E. corner of No. 445, then with that line S. 25 W. 452 poles
1308 to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances, to the said land belonging or appertaining, to hold to the said J. W. Cooper, assignee, heirs and assigns forever: Yielding and paying to us such sums of money yearly or otherwise as our general assembly from time to time may direct and promising obedience to all acts of the general assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of the said premises: Provided, always that the said grantee shall cause this grant to be registered in the register's office of our said county of Graham within twelve months from the date hereof, otherwise the same shall be void. Entered 6 April, 1853.

In Testimony whereof, we have caused these our letters to be made patent, and our great seal to be hereunto affixed.

Witness, Thomas J. Jarvis, Esq., our governor and commander-in-chief, at Raleigh, the 6 day of September, in the one hundred and seventh year of our independence, and in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] THOS. J. JARVIS, *Governor.*

By Command:
W. L. JAUNDEY,
Secretary of State.



1309 STATE OF N. CAROLINA.
Cherokee County:

By virtue of a warrant, No. 479, issuing from the entry taker of said county, I have surveyed for Harry B. Morris a certain tract of land lying in said county on the waters of Slick Rock creek. Beginning on a stake & pine tree the S. W. corner of No. 445 & runs S. 53 E. two hundred & twenty-six poles to a stake, then N. 25 E. four hundred & fifty-two poles to a stake, then N. 53 W. two hundred & twenty-six poles to a black gum the S. E. corner of No. 445, then with that line S. 25 W. four hundred & fifty-two poles to the beginning containing six hundred and forty acres more or less. Surveyed May 25th, 1853.

(Endorsed.)

NORTH CAROLINA,
Graham County:

OFFICE REGISTER OF DEEDS.

The within state grant came to hand on the 2nd day of May and was duly registered in the register's office of Graham county, Book B, page 272.

W. F. MANNEY,
Register of Deeds.

No. 101. J. W. Cooper, assignee, 640 acres, Graham county. Recorded in the office of the secretary of state, in Book 170, on page 464. W. L. Saundey, Secretary of State.

No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Filed June 4, 1898. J. T. Carter, Deputy Clerk.

No. 9120. 639.

John Blackburn, enters as general enterer 15 acres of land the N. E. fr. quarter of fr. Section 23, in fr. town 2 N. and range 6 E. of the basis line in the Ocoee District, beginning at the N. W. corner of said quarter section.

Entered by act of 1854, cent per acre.

July 8, 1869.

I certify that this is a true copy as appears of record in my office, this March 29", 1898.

T. J. KNOX,

Entry Taker & Register Ocoee Dist., Tenn.

1310 No. 9119.

Jno. Blackburn enters as general enterer, 4 acres of land, the N. E. fr. quarter of fr. section 35, in fr. town 2 N., and range 6 E. of the basis line in the Ocoee district, beginning at the S. W. corner of said quarter section.

Entered by act of 1854, cent per acre.

July 8, 1869.

I certify that this is a true copy as appears on record in my office, this March 29", 1898.

T. J. KNOX,

Entry Taker & Register Ocoee Dist., Tenn.

No. 9118.

Jno. Blackburn enters as general enterer, 6 acres of land, the S. E. fr. quarter of fr. section 36, in fr. town 2 N. and range 6 E. of the basis line in the Ocoee district, beginning at the S. W. corner of said quarter section.

Entered by act of 1854, cent per acre.

July 8, 1869.

I certify that this is a true copy as appears of record in my office, this March 29", 1898.

T. J. KNOX,

Entry Taker & Register Ocoee Dist., Tenn.

No. 9117.

Jno. Blackburn, enters as general enterer, 51 acres of land, the S. W. fr. quarter of fr. section 36, in fr. town 2 N. and range 6 E. of the basis line in the Ocoee district, beginning at the S. W corner of said quarter section.

Entered by act of 1854, cent per acre.

July 8, 1869.

I certify that this is a true copy as appears of record in my office, this March 29", 1898.

T. J. KNOX,
Entry Taker & Register Ocoee Dist., Tenn.

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Filed June 4, 1898. J. T. Carter, Deputy Clerk.

No. 8573.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of — R. L. Cooper, assignee, have given and granted, and by these presents do give and grant unto the said R. L. Cooper, assignee, a tract
1311 of land containing six hundred and forty (640) acres, lying and being in the county of Graham (formerly Cherokee), it being part of the land acquired by treaty from the Cherokee Indians bounded as follows, viz.: On Slick Rock Creek, beginning on a chestnut oak, standing on the line of No. 445 and runs N. 53 degrees W. 126 poles to a stake on the state line, then with that line S. 35 degrees W. 200 poles to a pine on the state line, then S. 36 poles to a poplar on the state line S. 53 degrees E. 426 poles to a stake, then N. 35 degrees E. 226 poles to a stake on the line of No. 479, then with that line N. 53 degrees W. 273 poles to the beginning as by the plat hereunto annexed doth appear, together with all woods, water, mines, minerals, hereditaments and appurtenances, to the said land belonging or appertaining; to hold to the said R. L. Cooper, assignee, heirs and assigns, forever. Yielding and paying to us such sums of money yearly or otherwise, as our general assembly from time to time may direct, and promising obedience to all acts of the general assembly now existing, or hereafter to be enacted, concerning the passage of the fish in the waters of said premises.

Entered 12" March, 1853.

In witness whereof, we have caused these letters to be made patent, and our great seal to be hereunto affixed.

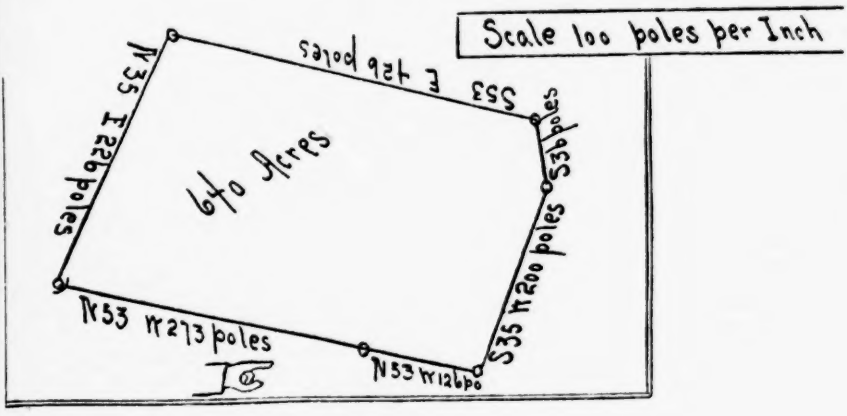
Witness, Alfred M. Scales, Esq., our governor and commander-in-chief, at Raleigh, the 26" day of May, in the one hundred and twelfth year of our independence and in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.]

A. M. SCALES, *Governor.*

By command:

W. L. JAUNDEY,
Secretary of State.



1312 STATE OF NORTH CAROLINA,
Cherokee County:

By virtue of a warrant No. 269, issuing from the entry taker of said county, I have surveyed for James H. Bryson & Gideon Morris, a certain tract of land lying in said county on the waters of Slick Rock Creek, beginning on a chestnut oak standing on the line of No. 445 & runs N. 53 degrees W. one hundred & twenty-six poles to a stake on the state line, then with that line S. 35 degrees W. two hundred poles to a pine on the state line, then south thirty-six poles to a poplar on the state line, then S. 53 degrees E. four hundred and twenty-six poles to a stake, then N. 35 degrees E. two hundred & twenty-six poles to a stake on the line of No. 479, then with that line N. 53 degrees W. two hundred and seventy-three poles to the beginning, containing six hundred and forty acres more or less. Surveyed May 25th, 1853.

J. W. C. PIERCY, *C. S.*

C. B., S. P. TIPTON.
ROBERT STRUTON.
PIERCY, *Mer.*

I hereby certify that the foregoing is a true copy of the original now before me, this Feb. 10, 1888.

SAMUEL W. LOVINGOOD,
County Surveyor of Cherokee County, North Carolina.

(Endorsed:) Entry No. 269. No. 8573. R. L. Cooper, Assignee 640 acres. Graham county. Recorded in the office of the secretary of state in Book 178, on page 332. W. L. Jaundey, secretary of state. Registered in the register's office of Graham county, N. C., in Book "E" of deeds on page 420, this 20th September, 1888. W. F. Manney, Reg. of Deeds. No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Filed June 4, 1898. J. T. Carter, Deputy Clerk.

1313 And afterwards, to wit: On the 18th day of December, A. D., 1912, memoranda by counsel for the defendant as to printing record were filed in words and figures following, viz:

1314 In the Supreme Court of the United States.

No. —, Original.

NORTH CAROLINA
vs.
TENNESSEE.

To the Hon. James H. McKenney, Clerk Supreme Court, Washington, D. C.

SIR: Pursuant to the stipulation hitherto filed by the parties in the above entitled cause, to the effect that each party shall have the right to prescribe the order in which the testimony shall be printed and the maps and exhibits arranged in the printed record, I beg to submit on behalf of the State of Tennessee the following memoranda, supplementing the request or instructions already submitted by the complainant State of North Carolina, and showing the order in which we desire the testimony, exhibits, maps, etc., offered on behalf of the State of Tennessee to be printed:

(1). It is to be noted that in paragraph 6 of the instructions submitted by North Carolina, relative to the tesimony of D. B. Burns, no reference is made to the further cross examination of said witness Burns at Knoxville, Tennessee, beginning on November 30, 1910, which is found in volume 1 of the testimony submitted on behalf of defendant State of Tennessee, beginning at page 184 and continuing to page 411. Because of said omission we request that said cross examination be set out in the printed record immediately following the original examination of said Burns, and the exhibits, called for in said 6th paragraph of the instructions submitted by com-

1315 plainant North Carolina. In response to question 375 (Tennessee's testimony, volume 1, p. 245) of said cross-examination of Burns, there was filed as exhibit "X" a copy of the map which had been filed as Exhibit "B" to the testimony of said Burns in the case of Hebard vs. Belding, then pending before the Court of Circuit Appeals at Cincinnati; we request said exhibit "X" to be placed in the record so that it can be looked to as part of the answer to questions 375 et seq. of Burns cross-examination. This map, Exhibit "X", is among the exhibits filed in your office by the State of Tennessee. There was used on the cross-examination of said Burns a blue print copy of his Exhibit "D", upon which he inscribed the altitudes of certain mountain ranges and peaks; this blue print copy is called for and referred to in Ques. 483 and answer (Vol. 1, p. 269) and should be printed in connection therewith, or at the end of Burns' cross-examination.

(2). In paragraph 6 of the instructions submitted by complainant North Carolina, the deposition of S. S. Gannet, taken at Asheville and included in a bound volume submitted by North Carolina

between pages 369 and 423 is called for, but no reference whatsoever is made to the further cross-examination of said S. S. Gannet in the City of Washington on January 19, 1911, before Mr. Frederick S. Tyler, as commissioner, said further cross-examination with exhibits "X", "Y", and "Z" thereto are on file in the office of the clerk of this court, and we desire that said further cross-examination, with the said exhibits, be arranged and printed in the record immediately following the testimony of said Gannet called for in said paragraph 6 of complainant's instructions to print.

(3). Complainant North Carolina took the deposition of John R. McClellan at Murphy, in the State of North Carolina, on the — day of ——, 1911, but no reference is made to his testimony in the instructions to print submitted by complainant. We desire that this testimony submitted by complainant be printed and followed with the cross-examination of said John R. McClellan at Knoxville, Tennessee, on September 5, 1911, which said cross-examination is found
1316 on pages 1 to 37, in volume 4 of the testimony submitted by defendant State of Tennessee. There are two exhibits to said cross-examination.

(4). The deposition of Mr. O. Welti taken in the Map Division of the Library of Congress, Washington, D. C., on January 20, 1911, before Mr. Frederick S. Tyler, commissioner, and duly filed by said commissioner with the clerk of this court.

(5). The following depositions taken at Knoxville, Tennessee, before the Clerk of the Supreme Court of said State, beginning on November 28, 1910, and found in volume 1 of the testimony submitted and filed on behalf of the defendant State of Tennessee, to wit:

(*a*). James L. Nelson.

(*b*). Pleas. Henry.

(*c*). Milton Williams.

(*d*). Onley Williams, with Exhibit "A" thereto, being a certified copy of what is known in this record as Map of 1821, filed as Exhibit "A" to the testimony of said Williams in response to Question 89, on page 80 of volume 1.

(*e*). William R. Carringer.

(*f*). H. H. Miller.

(*g*). A. C. Williams, with Exhibit "A" thereto.

(*h*). Robert Grant.

(*i*) John W. Stratton, with Exhibit "A" thereto, being a small map.

(*j*). Charles Seymoure, with Exhibits Nos. 1 and 2 thereto—Exhibit No. 1 being a map called for on pages 416-419, and exhibit No. 2 being copies of certain grants, records, etc.

(*k*). All the agreements and stipulations set out in said volume 1 of Tennessee's testimony—these agreements or stipulations can be inserted as they appear in said volume 1.

1317 (6). The following depositions appearing in Volume 2 of Tennessee's testimony, taken at Knoxville, on December 2, 1910, and exhibits thereto, and the agreements and stipulations set out in said Volume 2, to-wit:

(*a*). John H. Howard.

(*b*). Ben Posey.

(*c*). Robert T. Quarles, and the following exhibits to the dep
sition of Quarles, No. 1, copy of map of 1799; No. 2, copy of co
missioners' report of 1799, including field notes of the line run
that year; No. 3, report of commissioners of 1821; No. 4, letter wi
respect to Robert Armstrong; No. 5, copy of Hiwassee Purchase Ma

NOTE.—The testimony of Quarles may appear at two differe
places in volume 2, but the record not being before us we are unab
to state definitely how this is.

(*d*). Agreement providing for copying of depositions of W. I
Hale et al.

(*e*). Deposition of W. D. Hale and the following exhibits:

No. 1. Map showing part of the State line described and filed a
Exhibit "A" in response to questions 18 and 19 of examination i
chief;

No. 2. Being a block of wood, exhibited in response to questio
No. 72 of Hale's examination in chief—and of course cannot b
printed;

No. 3. Copy of Grant No. 4692, Hiwassee District, from the State
of Tennessee to Jesse H. Parsons;

No. 4. Copy of Grant No. 8970 (Ocoee District) from State of
Tennessee to A. M. and T. E. H. McCroskey;

No. 5. Copy of Grant No. 41091 from State of Tennessee to Grif-
fitt's and Morton;

1318 No. 6. Certified copy of map of Ocoee District, R. & E.
fractional Township No. 2;

No. 7. Certified copy of record in the case of George Peabody Wet-
more et al. v. Jack Stiles et al., Chancery Court of Monroe County;

No. 8. Certified copy of record in the case of Stevenson v. Lovin-
good from the Circuit Court of the United States at Knoxville;

No. 9. Copy of Chapter 196 of the Acts of the General Assembly
of Tennessee for the year 1844;

No. 10. Copy of grant No. 22179 from the State of Tennessee to
John H. L. Peck;

No. 11. Copies of North Carolina Grants Nos. 1499, 1500 and
1501;

(*f*). Deposition of O. W. Muller, with Exhibit "A" or No. 1
thereto, being copy of report made by him.

(*g*). The depositions taken and copied from the old record of
Hebard vs. Belding, under the stipulation filed in this cause and
the notice given pursuant thereto. The depositions called for in
said notice are as follows: W. D. Hale, J. K. Wilson, James Farr,
Emerson Debity, B. R. Nichols, A. D. Cline, John Debity, H. M.
Ditmore, Boyd McMurray, T. E. H. McCroskey and O. W. Muller.

(*h*). The following depositions taken and copied from the case
of Hopkins et al. v. Hebard et al., under the stipulation filed in this
cause and the notice pursuant thereto; W. D. Hale, O. W. Muller.

NOTE.—If in the foregoing instructions relative to what is con-

tained in volume 2 of the testimony etc., filed on behalf of the defendant State of Tennessee, we have omitted anything contained in said volume 2, we desire to state that it is our desire and we hereby request that the whole of volume 2, with the exhibits, etc.,
1319 called for therein, be printed in the order set out in said volume 2.

(7). Copy from the printed volume bound in light blue paper under the stipulation (typewritten) signed by the Attorney General of North Carolina, appearing on the outside cover of said volume bound in blue, as follows:

1. The report of the commissioners or special master, the Hon. Asbury Wright, found in said printed volume on pages 392 to 402, inclusive, and the supplemental report of said commissioners found on page 420 of said printed volume;

2. The opinion of the Hon. C. D. Clark, United States District Judge, found on pages 433-434, of said printed volume;

3. The decree of the United States Circuit Court at Knoxville entered in said cause of Hebard v. Belding, confirming the report of the said master or commissioner, the Hon. T. A. Wright, as set out on pages 434 to 438 of said printed volume;

4. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, handed down on July 13, 1900, upon the appeal of the defendant Belding in said case of Hebard v. Belding, as set out in said printed record on pages 473 to 490.

(8). The following depositions taken at Knoxville, Tennessee, on behalf of the State of Tennessee, beginning on January 6, 1911, and set out in volume 3 of the testimony filed in the office of the clerk of this court by defendant State of Tennessee, as follows:

(*a*). John L. Williams.

(*b*). Notice by the State of Tennessee to complainant North Carolina to produce the report of John R. McClellan, surveyor, etc.

(*c*). H. M. Kent.

(*d*). C. B. McNabb, with the following exhibits to the deposition of said McNabb:
1320 No. 1. Copy of Grant No. 32539 from the State of Tennessee to Jacob L. Peck;

No. 2. Copy of Grant No. 21639 from the State of Tennessee to Jacob and Adam Peck;

No. 3. To deposition of McNabb is a block of wood and so cannot be printed.

(*e*). M. E. Cozad.

NOTE.—If in the specification above we have omitted anything contained in volume 3 of the testimony offered and filed on behalf of the defendant State of Tennessee, we desire to now request that the whole of said volume 3 be printed in the order therein set forth.

(9). The following depositions taken on behalf of the State of Tennessee at Knoxville before the Clerk of the Supreme Court of that State acting as commissioner, beginning on September 5, 1911,

included in volume 4 of the testimony filed in this court, on behalf of the defendant State of Tennessee, to-wit.

(*a*). Deposition of John L. Williams, beginning on page 38 of volume 4, with the following exhibits to said deposition to-wit:

"AA". Being a copy of Burns' map Exhibit "D" to his original deposition with certain lines laid down thereon by the witness John L. Williams;

"BB". Being "plat of the State line claimed by North Carolina and lines surveyed and platted thereon from each end by Davenport notes"—said map or plat being signed by John L. Williams and W. D. Hale;

"CC". Being a copy of Burns' comparative exhibit "BB";

"DD". Being "map of East Tennessee and West North Carolina by Charles Wiring, C. E., made in 1876," but this map need
1321 not be reproduced by the printer but will be submitted to the court;

"EE". Being United States Coast and Geodetic survey of mountain region of North Carolina and Tennessee made in 1865, and corrected in 1884, but need not be reproduced by the printer on account of cost, defendant reserving the right to submit the same to the court;

"FF". Being a copy of the map of the Cherokee country in North Carolina surveyed in 1837;

"GG". Are the Nanta, Hala and Murphy sheets of topographical map of the United States revised in 1904, and need not be reproduced by the printer.

(*b*). Deposition of W. D. Hale taken at Knoxville as set out on pages 187 and 230 of Volume 4 of Tennessee's testimony, with Exhibit "AA" thereto, being a transcript of the record in the case of Mary L. Marton et al. v. Olney Dotson et al., from the Chancery Court of Monroe County, Tennessee.

(*c*). The agreement and stipulation of counsel relative to considering all Acts of North Carolina and Tennessee bearing on the controversy as parts of the record. This stipulation is found in Volume 4 of Tennessee's testimony immediately following the deposition of W. D. Hale, called for in the last paragraph (*b*).

(10) We suggest that in addition to printing and publishing the maps and plats hereinbefore referred to as exhibits to the several depositions named in these instructions, along with and as a part of said depositions to which said exhibits are applicable, the printer be requested to segregate copies of said maps or plats into a separate volume, so that they can be more conveniently examined. We assume that compliance with this request will be comparatively easy, and that as many copies of the exhibits can be made as are
1322 desired without additional cost, save the cost of paper, etc. There should be as many copies of the volume containing these exhibits as there are copies of the record.

(11). We notice that in paragraph 8 of the instructions submitted on behalf of complainant North Carolina the clerk is requested to have printed a considerable part of the record in the case of Stevenson v. Fain, to which we object, for the reason that there is no

stipulation in this record covering testimony from or any part of the record in the case of Stevenson et al. v. Fain. There is an agreement in the record permitting either party to select testimony from the case of Belding v. Hebard, but an examination of that stipulation will show that it does not include the case of Stevenson v. Fain at all. Moreover, the printed volume from which this testimony, etc., is sought to be extracted and printed into this record was not filed as evidence in this cause, so that defendant might have had an opportunity to except thereto. For these reasons we object to printing in this record any part of the record in the case of Stevenson v. Fain, called for in the 8th Paragraph of complainant's instructions.

Respectfully submitted,

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

Endorsed: 4 Orig'l 12. Office of the Clerk Supreme Court U. S. Received Dec. 18, 1912. Charles T. Cates, Jr., Attorney General of Tennessee.

1323 And on the same day, to wit, on the 18th day of December, A. D. 1912, the evidence for the defendant was opened and filed, which said evidence, arranged in accordance with directions of counsel, is in the following words, viz:

1324 Met pursuant to adjournment at 3:40 P. M. January 20, 1911, in the Map Division of the Library of Congress, Washington, D. C., to take further testimony on behalf of the defendant.

Thereupon O. WELTI, a witness called for and on behalf of the defendant, after having been duly sworn, deposed as follows:

By Mr. CATES:

Q. Mr. Welti, what is your age and occupation?

A. I am first assistant of the Map Division of the Library of Congress. I was born in 1872.

Q. How long have you been connected with the Map Department of the Congressional Library?

A. Five or six years, I think.

Q. Have you recently, upon request of the Tennessee authorities, made an examination of the maps on file in this Department, showing the boundary lines between the States of North Carolina and Tennessee southward from the Tennessee River?

A. The only thing I know about the case is that I had to examine these maps to see whether a certain river crosses the line or not.

Q. I will ask you if there is on file in this Department a map known as the Lucas 1823 map?

A. Yes sir. It is a map of North Carolina.

Q. That purports to be a map of North Carolina does it not?

A. Yes.

Q. And does it show where the Tennessee River breaks through the mountain on the western border of North Carolina?

A. It shows the Tennessee River crossing the line.

Q. Now does it show where the Hiawassee River crosses the line near the southern boundary of the State?

A. There is a stream there, but it is not named.

1325 Q. Well, now, southwesterly from the Tennessee River, does any other stream appear to break through that line?

A. No.

Q. State whether this map indicates that the western boundary of North Carolina, southwesterly from the Tennessee River, shows the line to be on a mountain?

A. The line is on a mountain.

Q. And no stream breaking through between the Tennessee River and the Hiawassee River, if that unnamed stream at the southern boundary is the Hiawassee River?

A. No.

Q. Now, I will ask you, Mr. Welti, if this Lucas map of 1823 does not show a stream running into the Tennessee River on the south side, somewhat east of the line between the States?

A. Yes.

Q. Now, Mr. Welti, please give us a list of the maps with the dates thereof on file in this department which show this boundary line between the States of North Carolina and Tennessee. I believe you have a list of them, have you not?

A. Yes, I have them here.

Q. Just name them over.

A. 1823, Lucas.

Q. That is the one you have been talking about?

A. Yes. 1823, Tanner. 1832, Mitchell. 1833, Brazier. 1835, Burr; (manuscript map). 1839, Tanner. 1839, Burr. 1842, Hinton. 1843, Mitchell. 1845, Meyer. 1845, Tanner. 1857, Cooke. 1863, Nicholson, (United States Coast Survey). 1864, Nicholson & Foote, (United States Coast Survey). 1865, Nicholson & Lindenkohl, (United States Coast Survey). 1865, Johnson. 1865, (corrected to 1884) (United States Coast and Geodetic Survey). 1866, Schönberg. 1871, Pearce. 1872, Pearce. 1873, Williams. 1874, Gray. 1881, Gray. 1881, Cobb. 1882, Kerr. 1883, Kerr. 1883, Colton. 1884, United States Coast Survey. 1885, Shaffer. 1890, Colton. 1985, Matthews Northrup. 1898, Rand, McNally & Co.

1326 Q. Those names that you have named I see on the list here you have designated as North Carolina maps?

A. Yes sir.

Q. Do any of those maps show Tellico River breaking through the State line? If so, designate which of them.

A. 1839, by Burr is the first map.

Q. That is the only North Carolina map that shows the Tellico River breaking through the State line?

A. Yes.

Q. Do all the other maps that you have named show an unbroken State line on a ridge or mountain from the Tennessee River southwesterly to the Hiawassee River?

A. There are three showing a stream breaking through.

Q. Give us the names of those maps to which you have just referred.

A. The map of 1845 by Meyer; 1845 by Tanner, and 1865 by Johnson.

Q. Do all the other maps that you have named as being North Carolina maps from the Lucas 1823 map down to the Rand, McNally & Co. map of 1898, show the line between the States southwesterly from the Tennessee River to be on an unbroken ridge or mountain?

A. There is one here where the State line follows a creek.

Mr. MATTHEWS: Which one is that?

Mr. CATES: What map is that.

A. 1833 by Brazier.

(By Mr. CATES:

Q. Then with the exceptions that you have named, all of the other maps, North Carolina maps, on file in this Department, show the line running from the Tennessee River southwesterly to the Hiawassee River on an unbroken ridge?

A. Yes, all of those that I have examined here.

Q. And such of them as show the Tellico River place the waters of Tellico River all on the Tennesee side of the line, do they not, except as you have stated?

A. Yes. Some of those maps of North Carolina do not
1327 show any Tellico River at all breaking into the line.

Q. I see here the Mitchell map of 1832 does appear to show that the Tellico River is all in Tennessee.

A. Yes.

Q. And the Nicholson & Foote United States Coast Survey maps of 1864 and 1865 also name and show the Tellico River as being in Tennessee, do they not?

A. Yes.

Q. And the Nicholson United States Coast Survey map of 1863 shows that also does it not?

A. Yes.

Q. Have you a map here called Tennessee map by Carey in 1818?

A. Yes.

Q. Let us see that, please.

A. Yes. (Witness produces map.)

Q. That map shows, does it not, Mr. Welti, that the Tennessee River breaks through the line between North Carolina and Tennessee?

A. Yes.

Q. Now I will ask you to state whether it shows the line between the States southwesterly from the Tennessee River as being on a mountain or following a stream at any place?

A. It is on a mountain.

Q. On which side of the line does it show all the waters of Tellico River?

A. On the left side; on the western side.

Q. That is on the Tennessee side of the line between the states?

A. Yes, on the Tennessee side.

Q. Now, have you a map here by Carey & Lea made in 1822?

A. Yes. (Witness produces map.)

Q. Does that show the Tennessee river breaking through the line between the States?

A. Yes.

Q. I will ask you to state whether southwesterly from the
1328 Tennessee River the line as laid down in that map, that is the line between the States, is on a mountain or ridge, or does it follow any stream?

A. It is on a mountain.

Q. Now state whether Tellico River appears on that map?

A. Yes.

Q. I will ask you to state whether that map shows the Tellico River breaking through the State line at any point?

A. It does not.

Q. I will ask you to state whether it shows all of the waters of Tellico River on the Tennessee side of the line?

A. Yes.

Q. Now I will ask you to state what other maps there are on file in this Department, which you call Tennessee maps, showing the line between the States of North Carolina and Tennessee, concerning which I have been questioning you?

A. There is a map of 1822.

Q. We have just mentioned that.

A. There is one of 1823 by Tanner, contained in the New American Atlas by Tanner.

Q. Does that show all of the Tellico River in Tennessee?

A. Yes.

Q. The next map?

A. 1825, a map in Tanner's New American Atlas.

Q. Does that show all the Tellico River in Tennessee?

A. Yes. 1830 Tanner.

Q. What does that show about the Tellico River?

A. The Tellico River in Tennessee. 1831, Hinton.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1833, Tanner.

Q. What does that show about the Tellico River?

A. Tellico River crosses the line.

Q. The next one?

A. 1836, Tanner.

1329 Q. What does that show about the Tellico River?

A. The same as the 1833.

Q. Is that the same Tanner who made those maps of 1823, 1825, and 1830, all of which show the Tellico River to be in Tennessee?

A. I suppose it is the same man. It is very likely it is the same man.

Q. Well, the next one?

A. 1854, Thomas Copperthwait.

Q. What does that show about the Tellico River?

A. Tellico River crosses the line. 1860, Colton.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1861, Colton.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1862, Lloyd.

Q. Does that show anything about the Tellico River?

A. No Tellico River. 1863, Lloyd.

Q. Does that show anything about the Tellico River?

A. The same as the map of 1862.

Mr. MATTHEWS: Do you mean that there is no Tellico River until 1862 and 1863?

A. No sir.

Mr. CATES: 1865.

A. 1865, Merrill.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1866, Colton.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1867, by Colton, the same.

Q. Does that show the Tellico River to be in Tennessee?

A. That shows the Tellico River to be in Tennessee. 1879, Kilebrew.

Q. What does that show about the Tellico River?

A. Tellico River in Tennessee. 1888, Hord.

Q. What does that show about the Tellico River?

A. That does not show the Tellico River. It shows a stream not named, entirely in Tennessee.

1330 Q. Now do any of those maps which you have designated here as Tennessee maps show the line just south of the Tennessee River running along a creek?

A. No.

Q. I will ask you to state whether, with the exception of those wherein you pointed out that the Tellico River cuts through the line all of those maps show the line from the Tennessee River southwesterly to Hiawassee River as running on an unbroken ridge or mountain?

A. Yes.

Q. Now, Mr. Welti, have you a map here pertaining to the Cherokee Indian Territory, and which accompanies Executive Document 182 to the 53rd Congress?

A. Yes.

Q. Does that show the Tennessee River breaking through the line between the States?

A. It shows a river here which is not named.

Q. Is not that the name up here (indicating)?

A. Yes, that is right, the Tennessee River.

Q. And does it not also show the Hiawassee River breaking through the line between the States?

A. Yes.

Q. Now I will ask you to state whether the line as laid down in this map follows a mountain ridge all the way from the Tennessee River to Hiawassee River?

A. Yes, except just right here (indicating).

Mr. MATTHEWS: Indicate "right here" where.

Mr. CATES: That is, just a little ways north of the Hiawassee River it appears to turn off the mountain and run directly south to the Georgia line?

A. Yes.

Q. Now I will ask you to state if it does not appear on this map that an unnamed river runs into the Tennessee river a little bit east of the line between the States, just south of the Tennessee River?

A. That would be——

Q. That is west (indicating); this is east (indicating);
1331 this is south (indicating).

A. No. Here the river cuts just a little bit on the west of the line.

Mr. MATTHEWS: You say it is west, and not east, then?

No response.

(By Mr. CATES:)

Q. Can you furnish us a copy of this map, Mr. Welti?

A. That I could not answer. Application would have to be made to the Librarian of Congress. The Library of Congress has no maps for distribution. Or the application would have to be made to the Superintendent of Public Documents.

Q. Whereabouts does that appear to be just west of the line?

A. Well, the scale of miles here is so small that I could not state it very accurately.

Q. It is so small that it is hardly discernible.

A. Yes, it is hardly——

Q. That is right, isn't it—it is so small that it is hardly discernible?

A. Yes, it is so small that I could not say accurately.

Q. What is the scale of this map?

Mr. MATTHEWS: Isn't the scale there?

A. No, not on this map. It seems to be ⅝ of an inch for 10—it does not say whether they are miles or what.

Q. Well that stream that you have just referred to appears to rise considerably east of the line does it not?

A. Yes.

Q. Is not the scale of this map 10 miles to the inch?

A. The word "miles" is not written here; but for 10; the distance for 10 seems to correspond to ⅝ of an inch.

Q. To ⅝ of an inch?

A. Yes.

Mr. MATTHEWS: It is usually understood that those are miles is it not?

A. It does not say so.

Mr. MATTHEWS: No, but it does not state so here, does it?

1332 A. No.

Mr. MATTHEWS: Where they are topographical?

A. No.

(By Mr. CATES:)

Q. Now, Mr. Welti, what is the length of that straight line south from the Hiawassee River to the Georgia Line in inches or fractions of an inch?

A. 6/8th of a inch.

Q. About ¾th of a inch?

A. Yes.

Q. As shown on this map, this straight line south from the Hiawassee River to the Georgia line is about 6/8th of an inch?

A. Yes.

Q. Now then the head waters of this stream that you have referred to as running into the Tennessee River about the point where the State line crosses it, is about 6/8th of an inch due east from the State line, is it not?

A. Yes.

Q. So that if this line south from that Hiawassee River to the Georgia line is about 13 miles long, then it is about 13 miles from the State line to the head waters of this stream, named, which flows into the Tennessee River about where the State line crosses that river, is it not?

A. Yes.

Q. This line of mountains running from the Tennessee River to the Hiawassee River is altogether to the east of the Tellico River as shown on this map, isn't it?

A. Yes.

Q. And the Tellico River, by name, is laid down on this map is it not?

A. Yes.

Q. Now refer to a map which you named among the North Carolina maps as having been named by Cook in 1857.

(Witness produces map.)

Q. And please state what legend showing the authority by

1333 which that map is made appears upon this map—what is it called?

A. The title of the map reads: "Cooke's New Map of the State of North Carolina, constructed from actual surveys, private contributions and authentic public documents procured for the purpose, under a special Resolution of the General Assembly of the State. William D. Cooke."

Q. Who does William D. Cooke purport to be, as shown on this map?

A. The Principal of the North Carolina Institution for the Deaf and Dumb and the Blind.

Q. Now let us examine that sheet showing the line between the

States of Tennessee and North Carolina southwesterly from the Little Tennessee River?

(Witness produces map).

Q. Now that shows the Tennessee River running through the line between the States, does it not?

A. Yes.

Q. I will ask you to state whether it shows the line between the States southwesterly from the Tennessee River following a mountain ridge or a stream?

A. It follows a mountain ridge.

Q. Now I notice on this map to the west of the line between the States a stream which runs down by a place called Tellico Plains, in a northwesterly direction until it passes Tellico Plains, and then it runs almost due north, or a little bit east of north, into the Little Tennessee River, does it not?

A. Yes.

Q. Now that stream is not named on this map, is it?

A. No.

Q. I will ask you to examine the map and state whether that stream heads on the west side of that line?

A. Yes.

Q. Now I will ask you to examine this map again and state whether, where the State line leaves the Tennessee River in
1334 its southwesterly course, there is any stream or creek marked there on either side of the line close to it?

A. No.

Q. And at that point, just south of the Little Tennessee River, I will ask you to state whether or not the line appears to be on the summit of a mountain?

A. It does.

Q. Now I will ask you to state whether to the eastward and running into the Tennessee River, there does not appear to be a stream marked Cheoah which enters the Tennessee River just at the foot of the mountain and to the east of the State line?

A. Yes.

Q. Do you know where this map came from, Mr. Welti?

A. Mr. Phillips is not here now, and it was in the Library before I came.

Q. It has been in the Map Department of the Library ever since you have been here?

A. I can find out for you and send you the information.

Q. It has been in the map department of the Library ever since you have been here?

A. It was received, July 5, 1900, as a gift from the U. S. Post Office Dept.

Q. Now, turn to the Burr map of 1835.

A. The map of Tennessee?

Q. The map of North Carolina.

A. The manuscript map of Burr?

Q. Yes.

(Witness produces map.)

Q. Now what is that map entitled, as it appears on the map itself?

A. (Reading:) "A map of North Carolina and South Carolina exhibiting the Post Offices and Post Roads, by David H. Burr, copied from his map of the States for the use of the Committee on Post Offices and Post Roads of the House of Representatives, 1835."

Q. Does that map show Big Pigeon River to be breaking
1335 through the line between the States of North Carolina and Tennessee?

A. Yes.

Q. Does it also show the Tennessee River to break through the line between the States?

A. Yes.

Q. Now I will ask you, Mr. Welti, to state whether this map here before you, running southwesterly from the Tennessee River, shows that it runs along any stream whatsoever?

A. It does not show anything but the line.

Mr. MATTHEWS: It does not show any mountains either?

A. Just a line.

Mr. MATTHEWS: Without any mountain or stream?

A. Yes.

(By Mr. CATES:)

Q. It merely shows a line from the Tennessee River southwardly to the Georgia line does it not?

A. Yes sir.

Q. That map also shows the western boundary of the State of North Carolina as indicated by a line all the way from the Virginia border to the Georgia border, does it not?

A. Yes.

Q. It does not show any etching that would indicate mountains at all; it just shows a line?

A. It just shows a line.

Q. And it does not show any river breaking through the line southwesterly from the Tennessee River, does it?

A. No. There is a pencil line, but I do not know whether it is a road or a river or anything else; it is simply a line.

Q. A line indicating a trail from Tellico Plains away over here to some places in North Carolina included within the Indian lines which name Valleytown, does it not?

Mr. MATTHEWS: He says he does not know what it is.

Mr. CATES: Let him answer.

1336 Mr. MATTHEWS: I object to your stating to him that "it shows a trail, doesn't it?"

(By Mr. CATES:)

Q. What is it that appears on this map from a place on the Tennessee side, indicated on the map as Tellico Plains, to a point on the North Carolina side, which is indicated as Valleytown?

A. From Tellico Plains—I cannot read this—there is a line in ink, and after that a line in pencil, and after that it is a dotted line down to Valleytown?

Q. You do not know what that line in pencil is which connects be tween the Tellico Plains line and this dotted line which runs out t Valleytown?

A. There is no indication on the map to show what it is.

Q. Well, you say that is a pencil line?

A. It seems to be a pencil line.

Q. None of this map is made with a lead pencil, is it?

A. This is a manuscript map, and it contains pencil marks (indi cating).

Q. But the lines dividing the Counties and the water courses an the map itself seems to be made with pen and ink, does it not, an then there are some notations or names written on it in pencil a different places?

A. Yes.

Q. Let me call your attention to that part of this western boundary line of North Carolina, as shown on Burr's map of 1835, immediately southwest from the Tennessee River, and I will ask you to stat whether or not any stream appears on either side of the line at tha place?

A. There is no stream on either side of the line.

Q. Where is that 1857 map we had, Mr. Welti?

A. Right here (producing map).

Q. Now going back to this Cooke map of 1857, I will ask you t state if it does not show a creek called Cane Creek, running into th Hiawassee River just about where the line between the State crosse the Hiawassee River?

A. There is a creek called Cane Creek running into thi
1337 stream, but I cannot see the name "Hiawassee" on the map.

Q. Well there is a stream called Cane Creek running int what appears to be a larger stream just about where the State lin crosses that larger stream, isn't there?

A. Yes.

Q. Now I will ask you to state if this Cooke's map of 1857 does no also show a creek, called Beaverdam Creek, rises nearly to the lin between the States on the North Carolina side and runs down int this unnamed larger stream which I referred to a while ago as Hia wassee River.

A. Yes.

Cross-examination.

By Mr. MATTHEWS:

Q. How did all of those maps come into the Congressional Li brary, do you know?

A. Maps come into the Library through purchase and through copyright and gifts.

Q. That is what I want to know, whether these maps had all com in here for the purpose of copyrighting?

A. Not all. Some are purchased, others are received by gifts, and still others are transferred from other Departments.

Q. This Department has the custody of all maps that come int the different departments of the Library?

A. This is the Division where all the maps in the Library of Congress are kept.

Q. And you could not designate, or could you, any of these maps that have come in otherwise than for the purpose of copyright?

A. Of these maps we have just examined?

Q. Yes; that you have given a list of.

A. All the maps coming to the Library by purchase have been marked so, and we can easily find out which are purchased and which are not.

1338 Q. Your idea is, with reference to a matter of a public nature of this kind, to obtain all the information on the subject that is accessible, I suppose, for the purpose of your Library, and for reference of people who desire them.

A. We are watching the market.

Q. There is a little map under here that I called your attention to the scale of (indicating). Whose map is that and what year?

A. It is taken from the "Complete Historical, Chronological and Geographical American Atlas, published in Philadelphia by Carey & Lee in 1822."

Q. The first one I got was the Lucas map of 1823.

Mr. CATES: This is under the head of Tennessee maps, and he has the undivided here, North Carolina maps and Tennessee maps.

Mr. MATTHEWS: That is the first one I have. I beg your pardon.

(By Mr. MATTHEWS:)

Q. That is the one you designated as the Carey map?

A. Yes.

Q. What is the scale of that map?

A. It seems to be about 2½ inches for 60.

Q. For 60 what?

A. It does not state.

Q. Suppose you take that 10, where it comes 10 there, and see what length that is.

A. Just ¾th of an inch.

Q. Three quarters of an inch for something or other?

A. Yes.

Q. Is not that the usual way of designating miles, and do you not know enough of maps, and is not your experience sufficient enough to say that this 10 is 10 miles?

A. No, I could not state that.

Q. Then that map, so far as getting any distances are concerned, would be perfectly useless to you, would it not, because you do not know the scale of it?

A. No, I do not know the scale except just what is indicated here.

1339 Q. The question I asked you then is, it would be perfectly useless to you or to anybody in getting distances on it, because there is no scale on it?

A. But the scale is not accurate enough.

Q. The scale does not tell you whether it is inches, feet or miles?
A. No sir.
Q. And therefore you could not assume either one or the other?
A. No.
Q. Now, measure off what is called 60 there, please.
A. (After measuring.) It is a little more than 2½ inches.
Q. A little more than 2½ inches?
A. Just a little more.
Q. Is it ⅛ or 1/16?
A. No it is not.
Q. Just a trifle more.
A. Just a trifle more.
Q. Measure across the whole State of Tennessee as shown on the map there.
A. The northern way?
Q. No; I mean north to south.
A. (After measuring.) It is just about 4⅛.
Q. Four and one-eighth what?
A. Of an inch.

Mr. CATES: Four and one-eighth inches?
A. Four and one-eighth inches.
Q. And that 60 was a trifle over 2½ inches?
A. Yes.
Q. So that that designation in that scale could not be feet or inches, could it?
A. No.
Q. Must it not be miles?
A. I could not say whether they were miles.
Q. Give us how wide the State of Tennessee is. I wish you would measure across the State of Tennessee, as I got you to measure
1340 across the State of Tennessee before, and see, assuming that to be 60 miles there, how wide the State of Tennessee is.
A. (After measuring.) Assuming that these are miles it is about 95.
Q. About 95 miles wide?
A. If these are miles.
Q. If the scale is miles, the State of Tennessee is about 95 miles wide?
A. According to this map.
Q. Now the scales of all these maps are designated, are they not, just as indefinitely as that?
A. I could not say; I have not examined the question of scale.
Q. You were not asked to examine that?
A. I have not examined those.
Q. You were not asked, I say, to examine that feature?
A. No.
Q. You have no knowledge outside of this map of how wide the State of Tennessee is, have you?
A. No.
Q. Could you say whether or not the scales of all these maps are very small or not—have you any knowledge?

A. No, I have no knowledge of the scales at all.

Q. You did not examine any of the maps with reference to the scales at all?

A. No.

Q. Will you kindly get the Burr map of 1839?

A. The map of Tennessee or of North Carolina?

Q. It is what you designated as the North Carolina map. (Witness produces map.)

Q. Now that map, I have a note, you say shows that the Tellico River broke through the State line

A. Yes, it does.

Q. And then upon that map a very considerable portion of the Tellico River appears to be in the State of North Carolina does it not?

A. Yes.

1341 Q. Now please look at the Brazier map of 1833. First before we leave this Burr map of 1839 state if that has any scale on it, and, if so, designating what?

A. Yes.

Q. What does it say?

A. Statute miles.

Q. What space is devoted to a mile or series of miles?

A. One inch for five miles.

Q. And that is the largest map and the latest map of Burr, isn't it?

A. That I could not answer.

Q. Well, you gave an 1835 Burr map in the manuscript and an 1839 Burr map—that is the one you had before you. You know of no other Burr maps than the ones you have given here?

A. No, not among these maps here.

Q. You have hunted up all the maps in any way concerned with the territory there, have you not?

A. Yes.

Q. Now then the Brazier map of 1833, please.

(Witness produces map.)

Q. What is the scale of that, if it has one marked on it?

A. On the Brazier map?

Q. Yes.

A. "Scales: American miles, 1760 yards."

Q. What space is devoted to a mile or series of miles? Please take your rule and ascertain.

A. (After measuring.) One inch for five American miles.

Q. Now that, I have a notation, shows a stream of some kind where the line crosses the Tennessee River. What portion of the map contains where that crosses the Tennessee River? Is this the line you were speaking of (indicating)?

A. Yes; these meet.

Q. What stream did you refer to?

A. The stream is not named.

1342 Q. Can you describe that stream, Mr. Welti, on that map in any way?

A. It seems to continue a dotted line.

Q. What does that shading mean there? Certainly there is not a stream along the summit of any ridge, is there, indicated there?

A. The shading indicates Unaka Mountains.

Q. The words "Unaka Mountain" are away below that, are they not?

A. But this shading is evidently a continuation of those mountains.

Q. That map, you think, would show that the Unaka Mountains were continued to the Tennessee River by that name?

A. I would suppose so.

Q. But there is a creek there running right down into the Tennessee River, is there not, right along that line?

A. Yes.

Q. Now turn to the map of 1845 by Meyer, and at the same time kindly get the map of 1865 by Johnson. That last map that I was asking you about, the Brazier map, is the largest map, isn't it, that you have of any?

A. I have not measured the maps. It is a large map.

Q. It is in many pieces is it not? How many pieces?

A. Six sheets.

Q. And those sheets look to be—measure how long and wide, please?

A. (After measuring.) 17½ inches wide by 27¾ inches long.

Q. Each sheet?

A. Yes.

Q. Now, have you the others that you spoke of, the Meyer map of 1845?

A. 1845?

Q. Yes. And also the Tanner map of 1845, please.

A. 1845 you say?

Q. Yes; the Meyer map of 1845, the one of Tanner of 1845, and the one of Johnson of 1865.

(Witness produces map.)

Q. Now which is this you have before you?

A. Map of North Carolina, 1845.

Q. But by whom?

A. By Meyer.

1343 Q. Will you kindly let me look at that (indicating another map). That stream that seems to cut through the line there is about in the position of the Tellico that you have heard talked about here, is it not?

A. There is a stream crossing the line, but it is not named.

Q. It is down, however, in that portion of the line where you see the name "Unaka Mountains" and northeast somewhat of the Hiawassee River, the Hiawassee River being designated there?

A. Yes.

Q. Now take the Tanner map of 1845. May I look at that?

A. Certainly.

Q. (After examining map.) That is about the same, is it not; down in that same region, I mean.

A. There is a stream crossing the line, but it is not named.

Q. But it is about in that same territory that I speak of, with reference to the other previous maps?

A. Yes.

Q. Now have you the Johnson map?

A. What date is it?

Q. It is 1865.

A. Yes. (Handing map to counsel.)

Q. Look at this Johnson map and see if the stream which you say crosses the line is also about in that locality?

A. (After examining map.) There is a stream crossing the line, but it is not named.

Q. But it is down in the same general locality, is it not, as on the two just previously examined maps?

A. Yes.

Q. Now take this Johnson map and cast your eye on the space where the Tennessee River cuts through the State line. The mountains north of the river seem to be trending in a general southwestern direction, do they not?

A. Yes.

Q. This is southwest, is it not (indicating)?

A. Yes.

1344 Q. And where they do show that the line is upon a mountain, it is a continuation in the same southwestern direction, is it not?

A. Yes.

Q. And how general is that among the maps that you have spoken of?

A. I have not compared them?

Q. You have not compared them?

A. No, I have not compared them.

Redirect examination.

By Mr. CATES:

Q. Now, Mr. Welti, refer to that Brazier map of 1833 again; that is a North Carolina map?

(Witness produces map.)

Q. Now, Mr. Welti, I will ask you to state if on this Brazier map of 1833 the State line immediately south of the Little Tennessee River does not appear to be on top of a mountain and running around with the mountain all the way to where it makes a turn due south toward the Georgia line?

A. It appears to be so.

Q. Now you were asked to compare this Brazier map in size with other maps. Refer to that Cook map of 1857 and tell us how many sheets of that map there are?

A. (After referring to map.) Four.
Q. What is the size of each sheet?
A. (After measuring.) 23 inches by 34 inches.
Q. That is, each sheet is 23 inches by 34 inches?
A. Yes.
Q. 34 inches long and 24 inches broad?
A. Yes, or nearly so; it is not exactly.
Mr. MATTHEWS: Outside measurement?
A. Yes.

Q. Now turn to this Burr map of 1839. I believe you said
1345 that the scale of that map was 10 miles to the inch?
A. (After measuring.) Yes.
Mr. MATTHEWS: Does that say "miles" on there?
Mr. CATES: Yes. That is the one you had him tell you about.

(By Mr. CATES:)

Q. Examine this, please, where a stream marked Tellico River breaks through the western boundary of North Carolina, and measure from the boundary line to the head waters of Tellico, a straight line without following the meanders of the stream, and tell us what it is.
A. (After measuring.) A little more than 1½ inches.
Q. About 1⅝ inches, is it not?
A. Yes.
Q. So that would indicate the head waters of Tellico River to be something like 16 miles east of the line, would it not, according to that map?
A. (After measuring.) Yes.
Q. Now let us look for a moment at these three Coast Survey maps of 1863, Nicholson, 1864, Nicholson & Foote, and 1865 Nicholson and Lindenkohl, and let us examine them in the order I have named.

(Witness produces maps.)

Q. You were asked by Mr. Matthews where you got those maps. You had designated this one as "Nicholson, United States Coast Survey map of 1863," have you not?
A. Yes.
Q. This map is on the scale of 1 inch to 10 miles, is it not?
A. One inch to 10 miles, yes.
Q. And it has Tellico River laid down on the map, has it not?
A. Yes.
Q. And it shows Tellico River rising to the west of the line between the States does it not?
A. Yes.
Q. Now, this map also has Cheoah River laid down on it, has it not?
A. Yes.

Q. And it shows Cheoah River flowing into the Little
1346 Tennessee River just east of the line between the States, does it not?
A. Yes.

Q. And this Nicholson map of 1863 also shows that the State line all the way southwest from the Little Tennessee River is on top of a mountain, does it not?

A. Yes.

Q. Now this United States Coast Survey map of 1864 by Nicholson & Foote is also on a scale of 1 inch to 10 miles, is it not?

A. Yes.

Q. This map is made or purports to be made in 1864. I find at the bottom of it "Compiled by W. L. Nicholson and A. Lindenkohl, 1863, with Corrections to May, 1864"?

A. Yes.

Q. Now that also shows about the same thing with respect to the line lying on a mountain southwest from the Tennessee River, and the Tellico River being west of that line, and the Cheoah River running in east of the line, the same as the last map that I have inquired about, does it not?

A. Yes.

Q. Now then I call your attention to the Coast Survey map of 1865, entitled at the top "Mountain Region of North Carolina and Tennessee," and at the bottom "Compiled by W. L. Nicholson & A. Lindenkohl, with corrections to January, 1865." Now that also shows the State line running southwest from the river on top of a mountain around to the Hiawassee River, and the Tellico River to the west of that line, and the Cheoah River running into the Little Tennessee River just east of the line, does it not?

A. Just east of the line?

Q. Yes, between the States.

A. The line does not continue on a mountain down to the Hiawassee; it just branches off a little.

Q. Then the line continues on a mountain all the way from the Little Tennessee River around to a point where it starts off south from the mountain direct to the Georgia line?

A. Yes.

1347 Q. Now the Tellico River, according to this map, rises to the west of that line, does it not?

A. Yes.

Q. And just east of the line where it crosses the Little Tennessee River, Cheoah River appears to run into the Little Tennessee?

A. Yes.

Q. Now what is the scale of this map?

A. One inch to 10 miles.

Q. I see right below where the scale is it is stated: "United States Survey, A. D. Bache supt." Do you know whether that Mr. Bache supt. was Superintendent of the United States Coast Survey?

A. I could not say now, but I can find out.

Q. How do you get these Coast Survey maps into this department, Mr. Welti?

A. As a whole, we get the Coast Survey maps as gifts, but these I do not know how they came to be here.

Recross-examination.

By Mr. MATTHEWS:

Q. Mr. Welti, on this last map to which you referred you said that this line went along a ridge southwest of the Tennessee, did you not?

A. It seems to follow the ridge.

Q. Now that ridge is in the same general southwestern direction as the ridge north of the river, is it not?

A. Yes.

Q. And you see Citico Creek running up almost to that ridge, do you not?

A. Yes.

Q. Now where are the others?

A. (Witness produces other maps.)

Q. All those Coast Survey maps to which you have just referred, of Nicholson, Nicholson & Foote, and Nicholson & Lindenkohl?

A. Here they are (indicating).

1348 Q. There is one just by Nicholson in 1863, is there not?

A. Yes.

Q. Let us take them just in order. Now that last one that you spoke of is the one that says it is corrected to 1884?

Mr. CATES: To 1864.

Mr. MATTHEWS: No. Corrected to 1884. (Reading:) "Nicholson & Lindenkohl, United States Coast Survey, Corrected to 1884." It is not the one that you said was revised in 1864.

Mr. CATES: Here is the one I was talking about.

Mr. MATTHEWS: I thought we were taking them in order.

Mr. CATES: I never said anything about one corrected to 1884.

Mr. MATTHEWS: There is one that the witness said was corrected to 1884.

Mr. CATES: Not in these last three maps.

Mr. MATTHEWS: It is the map of 1865 by Nicholson & Lindenkohl, Corrected to 1884—I have a note of it here.

The WITNESS: May I see my list?

Mr. MATTHEWS: Certainly.

The WITNESS: (After referring to list): 1865, Corrected to 1884. Here it is (exhibiting map).

(By Mr. MATTHEWS:)

Q. Now that is a United States Coast and Geodetic Survey map, is it not?

A. Yes, a Coast and Geodetic Survey.

Q. Now what is the scale of this map, if it shows—the same, is it not—one inch to 10 miles?

A. One inch to 10 miles.

Q. And that mountain range seems to run in the same general southwestern direction, does it not?

A. Yes.

Q. And Citico Creek, immediately on the west of it, runs almost up to it, does it not?

A. Yes.

Q. Where are the other two maps of 1863, Nicholson, and
1349 of 1864, Nicholson & Foote?

A. This is the 1864, Nicholson & Foote map (exhibiting map).

Q. That will do just as well. Just open that, please, and tell us the scale of that if it has one on it.

A. One inch to 10 miles.

Q. Now at the same time open the next one, please, the 1863 map; that is the first of those Nicholson maps. Just leave that other map open, and put this one on top of it. What is the scale of that?

A. One inch to 10 miles.

Q. Is it not a fact, Mr. Welti, that these maps substantially agree in the questions that I have put to you as to the general trend of the mountains there and the situation of Citico Creek?

A. (After examining maps.) Yes, the 1863, 1865, and 1864, they seem to be the same in regard to that Citico Creek.

Q. You have no knowledge, I take it, outside of what is shown by the map there as to which range of mountains in that locality it is that is nearest the head waters of Citico Creek?

A. I do not know anything except just what is shown on the maps.

Redirect examination.

By Mr. CATES:

Q. Now, Mr. Welti, I call your attention to this Coast and Geodetic Survey map, corrected down to June 1, 1884. You have been asked if Citico Creek did not appear thereon to rise somewhat west of the line between the States, and I believe you said yes?

A. Yes; it starts west of the line.

Q. Between the States?

A. Yes, between the States.

Q. Now I will ask you to state if just to the Northeast of the head waters of Citico Creek this Coast and Geodetic Survey map
corrected to June, 1884, does not show a ridge starting off
1350 from the main mountain and running northwesterly for some considerable distance?

A. Yes.

Q. And that is the same with these other Coast and Geodetic Survey maps to which we have directed our attention here?

A. It is the same on this 1865 map, and it is the same on this map of 1864.

Q. How about this map of 1863?

A. It is the same there.

O. WELTI.

Subscribed and sworn to before me this 20th day of January, 1911.

[SEAL.] FREDERICK S. TYLER,
Notary Public, D. C.

At this point, 5:40 P. M., the taking of testimony was suspended, to be resumed on call.

1351 In the Supreme Court of the United States.

No. —, Original.

NORTH CAROLINA
vs.
TENNESSEE.

DISTRICT OF COLUMBIA, *ss:*

I, Frederick S. Tyler, a Notary Public in and for the District of Columbia, do hereby certify that S. S. Gannett and O. Welti, personally appeared before me, the former at the Hotel Raleigh on January 19th and 20th A. D. 1911, and the latter at the Congressional Library on January 20th, A. D. 1911 and being by me duly sworn to testify the truth, the whole truth and nothing but the truth, did depose to the matters in their respective foregoing depositions, and did, as certified to, subscribe the same in my presence, and the witness S. S. Gannett did subscribe the Exhibits "Y" and "Z." annexed to his deposition; and I further certify that C. B. Matthews appeared on behalf of North Carolina and Charles T. Cates, Jr., Attorney General, appeared on behalf of the State of Tennessee.

In testimony whereof I have hereunto set my hand and seal this 23rd day of January A. D. 1911.

[SEAL.] FREDERICK S. TYLER,
Notary Public, D. C.

My commission expires February 27th, 1911.

1352 In the Supreme Court of the United States.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

MONDAY, *November* 28, 1910.

Depositions taken on behalf of the State of Tennessee, by agreement of parties, before the Supreme Court Clerk of the State of Tennessee, he being an officer of said State duly authorized to take depositions, at the chambers of said Supreme Court of Tennessee, in the City of Knoxville, beginning on Monday, November 28, 1910, the witnesses being duly sworn by said Clerk. Formal caption and certificate to their depositions are waived.

It is agreed that the testimony of the witnesses may be written up by the stenographer, and the name of each may be signed to the deposition by the said Clerk of the Supreme Court of Tennessee, unless otherwise stated at the close of the deposition.

Appearances for the State of North Carolina: General Theo. F. Davidson, Ben Posey, Esqr.; F. A. Sondley, Esqr.; Duff Merrick, Esqr.

For the State of Tennessee: Charles T. Cates, Jr., Attorney-General of Tennessee; T. E. H. McCroskey, Esqr.

1353 The first witness, JAMES L. NELSON, of lawful age, having been duly sworn, deposes as follows:

By General CATES:

Q. 1. What is your full name?
A. James L. Nelson.
Q. 2. How old are you?
A. 77 years old tomorrow.
Q. 3. Where do you live now?
A. I live in Monroe County, Tennessee. Carringer is my post-office.
Q. 4. Where abouts in Monroe County is that?
A. In the upper part on Tennessee River.
Q. 5. Is that on Citico Creek?
A. Above Citico Creek—near Chilhowee.
Q. 6. How far from the Slick Rock country?
A. I suppose it is six or eight miles.
Q. 7. How long have you lived at that place in Monroe County?
A. 21 years.
Q. 8. Where did you live just before moving to Monroe County?
A. In Blount County, Tennessee.
Q. 9. How long did you live in Blount County, Tenn.?
A. Thirty odd years.
Q. 10. Where abouts in Blount County.
A. I lived above Abrams Creek—right on the bank of the Tennessee River.
Q. 11. Did you ever hold any official position? Either in Monroe or Blount Counties?
A. No sir.
Q. 12. What is your occupation, Esqr.?
A. Farmer.
Q. 13. Were you a farmer in Blount County?
A. Yes sir.
Q. 14. Where were you born?
A. Haywood County, North Carolina; eleven miles from Waynesville, the county site.

1354 Q. 15. What parts of North Carolina did you live in before moving to Blount County, Tennessee?

A. I lived in Macon, Cherokee and Jackson Counties—in Cherokee most of the time.
Q. 16. What part of Cherokee County did you live in?
A. I lived in the Northern part.
Q. 17. In that part of Cherokee County that is now Graham County, N. C.?
A. Yes sir.
Q. 18. Are you acquainted with the territory around the waters of Cheoah River, and where Cheoah River runs into Little Tennessee River?
A. Yes sir, it runs in above the mouth of Slick Rock Creek.
Q. 19. Do you know where Little Bear Creek is over there?
A. I know where it is said to be.

Q. 20. Mr. Nelson, tell us what you know with reference to the line between North Carolina and Tennessee running along the Hangover Ridge or Lead from Hangover Mountain to the Little Tennessee River?

A. I was doing business for Bill Thomas there in a store. He had a great deal of land there. He entered two tracts of land beginning on the State line near the mouth of Big Slick Rock Creek. He sent me word, or wrote to me, to get Wess Piercy and have it surveyed. Piercy was the County Surveyor. I did not go with them down from Slick Rock Gap. They went off down there and made the corners. Cooper told me—Frank Cooper—that they made a corner tree on a spruce pine and ran right up to the Slick Rock Gap and to that ridge, including—first, 640 acres; and Thomas told me that that line—that ridge—was the State Line, and to tell Piercy not to cross that line for that was Tennessee.

Q. 21. You say that Thomas told you that that ridge was the State Line—what ridge, the Hangover Ridge?

A. Yes, sir, between Slick Rock and Bear Creek.

Q. 22. That that ridge between the waters of Bear Creek and the waters of Slick Rock Creek was the State Line?

A. Yes sir.

1355 Q. 23. Who was this Bill Thomas?

A. He was a man that was a great business man. I represented him in these surveys a great many times. He entered a great deal of land. He was in the Senate for Western North Carolina for eighteen years.

Q. 24. Was that W. H. Thomas?

A. Yes sir.

Q. 25. You say he had a store?

A. Yes sir, three or four of them.

Q. 26. Where were they located?

A. One in Murphy, one in Valley River, and one in Cheoah—then called Fort Montgomery.

Q. 27. You say you were employed by him in relation to the business of some one of these stores?

A. Yes sir. I stayed in the stores eight or nine years.

Q. 28. Which ones?

A. One at Murphy, one at Quallia Town, and Valley Town.

Q. 29. Now, Mr. Nelson, when Thomas gave you the instructions for Surveyor Piercy, he did not go with you on the land himself?

A. No sir, he entered the land.

Q. 30. Piercy was going to survey out that entry?

A. Yes sir.

Q. 31. How long ago has that been Mr. Nelson?

A. 57 years ago, as I recollect.

Q. 32. You were then a young man about twenty years old?

A. Yes sir.

Q. 33. Did you yourself go to that pine tree.

A. No sir, I didn't go down to it.

Q. 34. It was Thomas' instructions to Piercy, through you, to go to the pine tree?

A. Yes sir, the entry spoke of beginning at a spruce pine on the bank of the Tennessee River.

Q. 35. How far from Slick Rock Creek?

1356 A. As well as I can recollect, from both lines it must be about a half mile above the mouth. He owned land on both sides of the river. I gave it in for taxes for him and paid the taxes.

Q. 36. And then from that pine the line ran to Slick Rock Gap?

A. Yes sir, right through Slick Rock Gap.

Q. 37. And thence up over the Hangover Ridge?

A. Yes sir, so they said. They had two tracts to run out, and we wanted to go down there for a little drive.

Q. 38. Where abouts did you actually meet the surveying party?

A. They came to my store.

Q. 39. Where abouts was that?

A. Upon Cheoah River. I paid their expenses and they told me what they had done.

Q. 40. Who was in that party?

A. Frank Cooper—and I forget the others. There was several of them. I went there to show them where the other was to run—one came in at the mouth of Cheoah River.

Q. 41. You say that Piercy told you that the ridge which divided the waters of Bear Creek from Slick Rock Creek was the State Line?

A. No sir, Thomas told me to tell him.

Q. 42. Thomas told you to tell Piercy that the ridge which divided the waters of Bear Creek from Slick Rock Creek was the State Line?

A. Yes sir.

Q. 43. You said a moment ago that Thomas owned land on both sides of the river in Cherokee County and Macon County, you mean on both sides of Little Tennessee River?

A. Yes sir.

Q. 44. And that now on the South side of the river would be Graham County, N. C., cut out of Cherokee County, and on the North side of Little Tennessee River would be Swain County, N. C., cut out of Macon County?

A. Yes sir.

Q. 45. You said a moment ago, in referring to Piercy and those assisting him coming to your store on Cheoah to survey, that

1357 you and some of the others wanted a "little drive"—what did you mean by that?

A. A deer drive.

Q. 46. Now Mr. Nelson, after that survey had been made, please tell us whether you had any instructions from Thomas in relation to establishing a possession down there on that land, and, if so, where you put the possession?

A. They wrote to me to go to Yellow Creek and hire some hands and make some possessions—he marked it out and I went to Yellow Creek and hired Bill Williams, Tom Kirkland and John Carringer.

Q. 47. Where did you put those possessions?

A. Well, we finished above Cheoah, and waded the river above the mouth of Cheoah and camped. He wanted me to go to the lower

tract. We split rails down there and put them up—about a hundred.

Q. 48. You mean cleared up a little tract and fenced it in?

A. Yes sir.

Q. 49. That place you refer to last is between Hangover Ridge and Cheoah?

A. Yes sir.

Q. 50. On the East side of Hangover Ridge?

A. Yes sir, I suppose improvements were made a mile above Slick Rock Creek—that is my judgment—first, the 640 acre tract.

Q. 51. You are quite certain that it was between the Hangover Ridge and Cheoah?

A. I know it.

Q. 52. You spoke of a store a while ago on Cheoah to which the surveying party came—how far was that from Hangover?

A. I couldn't tell you how far.

Q. 53. I take it you have known that country since you were quite a young man, haven't you?

A. I suppose I was about twenty or twenty-one years old. I think it has been about 57 years since that survey. That is my judgment.

Mr. SONDLEY: The plaintiff objects to the introduction of testimony relative to the declarations of Thomas and Cooper, and acts with respect to the location of the line on Hangover Ridge.

1358 Q. 54. Now, Mr. Nelson, tell us where, during all the years you have known that country, it has been generally understood among the people living over there in that neighborhood the line between Tennessee and North Carolina is just South of the Tennessee River—whether over the Hangover Ridge or up the Slick Rock Creek?

A. In that day and time I never heard of the Slick Rock Creek named as the State Line. It has always been understood by the oldest citizens that that line went along that ridge from Slick Rock Gap to Hangover Ridge between Slick Rock Creek and Bear Creek.

Q. 55. Now, in that place that you call Slick Rock Gap, that is a sort of a trail or path running through from the Cheoah country on the East to the Slick Rock country on the West and then on down toward Tallassee, is it not?

A. Yes sir.

Q. 56. Over to the waters of Slick Rock and beyond?

A. Yes sir.

Q. 57. You say that for the many years you have known that country you never heard of any claim being made that the line ran up to Slick Rock Creek?

A. No sir.

Q. 58. Tell us, as far as you can, when you first heard of such claim being made?

A. Years after that. I know that people living on Slick Rock came down to our precinct to vote. They claimed that they lived in Tennessee.

Q. 59. You say that the people, as far back as you know, who

lived in the Slick Rock country, came down to Monroe County to vote?

A. Yes sir.

Q. 60. They didn't go over into North Carolina to vote?

A. No sir.

Q. 61. At that time you were living in North Carolina?

A. Yes sir.

Q. 62. And you know that they didn't come over to that country to vote?

A. Yes sir. I have been living in Tennessee about 51 years.

1359 Q. 63. During all that time the people living in the Slick Rock country voted in that district of *of* Monroe County which takes it in up there?

A. Yes sir.

Q. 64. Mr. Nelson, Did you know a man by the name of John Carringer, the father of Riley Carringer?

A. Yes sir, I knew him.

Q. 65. Where did you become acquainted with him.

A. I couldn't tell you exactly.

Q. 66. Over in North Carolina?

A. Yes sir. He done a heap of work for us—Thomas—getting ready for a railroad to be built down below the store—the old Knoxville and Charleston road. I have been acquainted with him since I was a young man. He is a little older than I am.

Q. 67. About how much older than you?

A. A few years older than I am.

Q. 68. As much as ten years?

A. I don't know. He is up in the eighties so I understood.

Q. 69. Did you ever have any talk with him about where the State Line is up there?

A. No sir, I don't recollect that I did.

Q. 70. But he did work back in the fifties for this same man Thomas who was interested in settling land over in that country?

A. Yes sir, in managing improvements, etc. I hired him.

Q. 71. Mr. Nelson, name some of the people that you have known who lived in the Slick Rock country?

A. Jim Farr, old man John Debity, and then there are others that have been there that I can't mention their names.

Q. 72. Jim Farr and old man Debity lived up there a good while, and the others were, more or less, transient, were they not?

A. Yes sir.

Q. 73. You say that the people who lived up there voted at Mulberry precinct in Monroe County?

A. That is what they say.

1360 Mr. SONDLEY: The State of North Carolina objects to the declarations of these people referred to by witness as to where they voted.

Q. 74. Do you know of your own knowledge that those men came down to Mulberry to vote?

A. No sir.

Q. 75. What you know about the question of voting is from hearsay?

A. Yes sir.

Q. 76. You were talking a moment ago about Mr. Piercy, the County Surveyor in that country—was that J. W. C. Piercy?

A. I don't remember.

Q. 77. Was it Wess. Piercy?

A. Yes sir.

Q. 78. Was there a men by the name of Colvert along in that crowd?

A. I don't remember. Frank Cooper was along.

Q. 79. You don't remember whether there was a man by the name of Colvert along or not?

A. No sir, he might have been.

Cross-examination by Mr. SONDLEY:

Q. 80. How many people were living on Slick Rock between the years 1853 and 1860.

A. Not any that I know of.

Q. 81. None at that time?

A. No sir, I don't think so.

Q. 82. How many people were living on Slick Rock from 1860 to 1870?

A. I can't tell you.

Q. 83. Do you think any one lived there during that time?

A. I don't know—after they settled up there, it has been over thirty years. They came down there in the Seventeenth District of Monroe County. I lived over in Blount County about twenty years ago.

Q. 84. So that the settlement on Slick Rock was about thirty years ago?

A. Yes, I suppose so, it was out of the way from where I traveled.

Q. 85. Did anybody live on Slick Rock prior to that time?

1361 A. Not that I know of.

Q. 86. John Debity did finally settle on Slick Rock Creek and he was the first settler on that Creek.

A. Yes sir, I suppose he was.

Q. 87. Jim Farr came in later?

A. Yes sir, I think he did.

Q. 88. It was in about 1853 you think it was, as I understand you, Thomas had made some entries on the Southern side of the Tennessee River.

A. I think that was in 1857—that is my judgment, I am not positive.

Q. 89. At any rate, how many entries did Thomas ever make there calling for the State Line on the Southern side of Tennessee River?

A. I don't know how many. He had two 640 acre tracts.

Q. 90. He never entered them the second time?

A. No sir.

Q. 91. So that the lands that he entered, he perfected the entires by taking grants on them, did he not?

A. I reckon he did.
Q. 92. And those Grants were in accordance with the entries?
A. I reckon so.
Q. 93. And the surveys were made?
A. I reckon so.
Q. 94. You were his agent at that time?
A. Yes sir.
Q. 95. And you took charge of making improvements.
A. Whatever he directed me to do, I did.
Q. 96. When you got directions from Thomas to carry certain messages about the State Line to Piercy, the surveyor, did you carry the messages?
A. Yes sir.
Q. 97. That was before the survey was made?
A. Yes sir.
Q. 98. That has been how long ago you think?
A. It has been about 57 years ago, to the best of my recollection.
Q. 99. Did you make any memoranda of what Col.
1362 Thomas told you to tell Piercy?
A. No sir, I just remembered it.
Q. 100. Thomas never made any writing about it and deliver it to you, did he?
A. I think he did.
Q. 101. Where is it?
A. I haven't got it.
Q. 102. What became of it?
A. I don't know—if he made any writing about it, it has been lost a long time ago.
Q. 103. Thomas told you to tell Piercy where to make the survey?
A. He might have told me or he might have wrote me.
Q. 104. You don't remember whether Thomas wrote it or told you in person?
A. I'm not positive. I know he was there and told me about making the improvements down there on those two tracts. I hired the hands and made them.
Q. 105. Do you remember how long it was after you got directions from Thomas until you told Piercy?
A. I don't know. I sent them word by mail across Valley River.
Q. 106. You sent Piercy word?
A. Yes sir, I guess I did.
Q. 107. I understood you to say that you delivered the messages in person?
A. I wrote to him to come on and make the survey and then told him what Thomas said.
Q. 108. You wrote him to come on?
A. Yes sir.
Q. 109. Did you write him what directions Thomas told you to give him?
A. No sir, I told him when he came.
Q. 110. The tract of land that Col. Thomas was talking about down there as the State Line on the Southern side of the Tennessee River was what is known as 920, was it not?

A. I don't remember.

1363 Q. 111. It was a pretty big tract?

A. Yes sir—two 640 acre tracts. I don't remember the number.

Q. 112. Did you ever know the number.

A. If I did, I forgot it.

Q. 113. In whose name were the entires that you talk about as made by Thomas put in? In his own or some one else's?

A. I don't know.

Q. 114. Did he buy the entries or did he cause the original entries to be made in the name of himself?

A. I *d*uppose he made them himself, but I don't know.

Q. 115. You don't know whether they were entered in the name of a man by the name of Mark Britton, do you?

A. I don't know. I knew him. I don't think they were made in his name. Mark Britton had one 640 acre tract down close to the mouth of Cheoah river some where, and him and Col. Thomas got into a dispute. Thomas thought Britton was crowding over on him, and I understood that Britton made it over to him.

Q. 116. You would not undertake to say whether or not those entries were in the name of Mark Britton which lay on the State Line and run across Tennessee River?

A. No sir.

Q. 117. What about William Johnson—wasn't it in his name?

A. I wouldn't say it was. It seems to me that I have heard it spoken of that Johnson made a mortgage to Thomas.

Q. 118. You don't know whether those entries were made originally in the name of William Johnson or not?

A. I do not.

Q. 119. Do you know anything about the Turnbull entries?

A. No sir.

Q. 120. Who was with you at the time that W. H. Thomas told you to tell Piercy about making the survey?

A. I don't know whether anybody was.

Q. 121. You don't know whether it was done orally or by letter?

1364 A. No sir, I couldn't say. We didn't pay any attention to anything, away back there.

Q. 122. Nothing attracted your attention—land was cheap and everything was running easy?

A. Land was about five-cents per acre towards the last. I don't know only what these people tell me.

Q. 123. What you know apart from the declarations of Thomas is simply what somebody told you?

A. Yes sir, what the old people said about that line.

Q. 124. The lands on the northern side of the river were in different tracts from those on the southern side, were they not?

A. The two tracts I have reference to crossed the river. Those others there were not in dispute. I gave them in for taxes and paid the taxes.

Q. 125. You never heard of any dispute or litigation about who owned the lands on the southern side of the river, did you?

A. No sir, only the old people told me that the ridge was the State line.

Q. 126. Who were those old people?

A. Bill Thomas.

Q. 127. Who else?

A. Dick Stratton.

Q. 128. Where is he?

A. In his grave.

Q. 129. Where did he live?

A. He lived down in that country for years.

Q. 130. How did he happen to tell you?

A. We were just talking like a great many people do.

Q. 131. When was that?

A. That has been thirty or forty years ago. He has been dead thirty years.

Q. 132. Who else was it that told you?

A. It was the talk generally through the country all the time in Cheoah and along Tennessee River.

1365 Q. 133. Who else besides Dick Stratton and William Thomas?

A. An old fellow by the name of Adams that lived in Cheoah. He used to hunt a great deal in there.

Q. 134. Where did he say it was?

A. On that ridge—dividing ridge between Slick Rock and Cheoah.

Q. 135. Did he describe it that way?

A. I don't know that he did. He said the Slick Rock Gap.

Q. 136. Anybody else?

A. I don't know that it is necessary to tell—I don't remember—the people were just talking generally.

Q. 137. What akin was Bill Adams to John Adams?

A. Old Bill was John's father I think.

Q. 138. Where did Bill live when he told you that?

A. Down at Yellow Creek on the Cheoah River.

Q. 139. Can you think of any one else?

A. Jeff Colvert, Andy Colvert and Cal Colvert—I heard them all talk about the old State Line.

Q. 140. Suppose it should turn out that Andy made entries elsewhere, what would you think about it?

A. I don't know. He made a big entry there somewhere and sold it to Tom Calloway.

Q. 141. How did Andy happen to tell you?

A. We were just talking about where the State Line was. I heard them say that the ridge was the State Line.

Q. 142. Where was he when you heard him talking?

A. At one time he was at the store. I have heard them all talk about it.

Q. 143. All talking at the store?

A. No, talking at different times—they did not care much about the State Line, but kept talking about it. Some of them says, we

will go over in Tennessee and take a drive over on Slick Rock—in Tennessee.

Q. 144. Who said that?

A. Just any of them.

Q. 145. Who was it?

1366 A. It was just the talk—I don't know all the names—general talk.

Q. 146. They did not say then that that certain ridge is the Tennessee line, but they said "We will go over in Tennessee on Slick Rock"—is that it?

A. Yes sir, that is what they said.

Q. 147. And that applies to all these people except W. H. Thomas who said where the ridge was?

A. Yes sir.

Q. 148. So that the others did not say anything about the ridge, but simply said we will go over in Tennessee on Slick Rock?

A. Yes sir. I don't know where the State Line is—I don't pretend to know. I only know what the old people said.

Redirect examination.

By General CATES:

Q. 149. Taking it up just where counsel left off, you say it was the common talk over there in North Carolina that beyond that ridge over there was Tennessee, what ridge do you mean—is that the Hangover Ridge?

A. Yes sir, Slick Rock Ridge we called it—the Slick Rock Gap Ridge.

Q. 150. Does that lead over to the Hangover and Haao Mountains?

A. Yes sir.

Q. 151. Now, you said you gave that land in for taxes on the east side of that ridge for Thomas—both north and south of the river?

A. Yes sir.

Q. 152. And I believe you told Mr. Sondley that you did not know of your own knowledge in whose name those particular entries were taken that you describe?

A. No sir, I don't know.

Q. 153. Do you know who the claimants of that land under North Carolina titles over there are now?

A. The Thomas heirs are the claimants I reckon. They have been in a suit over it I understand.

1367 Q. 154. I will ask you to state whether or not anybody was after you to come to Asheville and testify in the State Line lawsuit?

A. Yes sir.

Q. 155. Who was it?

A. I am not going to tell you—that is outside.

Q. 156. I mean some one on behalf of North Carolina?

A. Yes sir.

Q. 157. Where were you at that time?

A. I was at home when I got the first letter and was at Bryson City when I got the other one.

Q. 158. Why didn't you go?

A. I didn't want to go.

Q. 159. Why?

A. Because—I went with some of the parties up to Bryson City and we were just talking. I had some business up there trying to make a land sale, and didn't go. I couldn't have done them any good.

Recross-examination.

By Mr. SONDLEY:

Q. 160. You say you will not tell who it was that asked you to go and testify in the State Line Case?

A. I don't have to.

Gen. CATES: I submit on behalf of Tennessee that if North Carolina desires to have Mr. Nelson answer that question, North Carolina is entitled to an answer.

Mr. SONDLEY: Let us have it.

A. I won't do it—they were special friends of mine.

Q. 161. You do not mean that anybody—the lawyers representing North Carolina?

A. No sir.

1368 Q. 162. So that this was simply some one, on their own accord, without any instructions from North Carolina or her lawyers so far as you know?

A. I guess it was. I got one from Madisonville and another from Asheville. These parties knew that I would stay in Bryson City several days.

Redirect examination.

By General CATES:

Q. 163. You spoke a while ago of Slick Rock Ridge—where is Slick Rock Ridge?

A. I don't know a ridge by that name.

Q. 164. In your examination you have said something about Slick Rock Ridge, do you mean the ridge running through Slick Rock Gap?

A. No sir, I meant Slick Rock Gap.

Mr. SONDLEY: You did not answer that until the Attorney for Tennessee asked you, did you?

A. No sir, and I have told you all I know about it.

Mr. SONDLEY: We don't mean any discourtesy to you, Mr. Nelson, at all—we want to find out fully what you know about it.

Recross-examination.

By Mr. SONDLEY:

Q. 165. You said you gave in the land for Thomas for taxes, you didn't describe it by metes and bounds, do you?
A. No sir, I just gave the number of acres he owned.

Redirect examination.

By General CATES:

Q. 166. You gave those lands in for taxation in North Carolina?
A. Yes sir.

Recross-examination.

By Mr. SONDLEY:

Q. 167. How late did you continue to give in those lands for taxes?

A. Way back in the fties—I am not positive. Those
1369 things were never talked about until those suits came up. People never thought of the State Line.

Redirect examination.

By General CATES:

Q. 168. Mr. Nelson, you have used two dates or times in reference to your knowledge of this country in connection with the instructions given you by Mr. Thomas to be delivered to Wess. Piercy, the surveyor—at one time you said about 57 years ago, and at another time you said about in 1857—which do you mean?
A. I mean 57 years ago. The time that I was in the store. It was some time in the fifties.
Q. 169. What time in the fifties do you think it was?
A. I think it was in 1856 or 1857—along there some where. I am not positive, it had been so long ago.
Q. 170. When you were about 20 or 21 years old?
A. Yes sir.

And further deponent saith not.

JAMES L. NELSON.

Subscribed and sworn to before me, this the 28th day of November, 1910.

S. E. CLEAGE,
Supreme Court Clerk.

Witness one day. Mileage one hundred miles.

Under the stipulation, the signature of the witness is written in by the Clerk of the Supreme Court of Tennessee, the witness having been duly sworn.

1370 The next witness, PLEAS. HENRY, of lawful age, having been duly sworn, deposed as follows:

Examined by General CATES:

Q. 1. State your full name and your age?

A. My name is Pleas. Henry, and I was 54 years old on the 26th day of October.

Q. 2. Where do you live?

A. I live on Little Tennessee River in Monroe County, Tennessee, the Seventeenth District.

Q. 3. How long have you lived there?

A. About fifteen years.

Q. 4. Where did you live before that?

A. I lived at the mouth of Abram's Creek in Blount County, Tennessee, since 1875.

Q. 5. You have virtually lived in the neighborhood of the Slick Rock country all your life?

A. Yes sir, since 1875.

Q. 6. Have you ever been in the Slick Rock country?

A. Yes sir, I have been all over it.

Q. 7. What were you doing up there?

A. Looking after cattle. I had cattle there for a number of years.

Q. 8. Do you know where the Hangover Ridge is?

A. Yes sir.

Q. 9. What do you know about the location of the State Line along there as it has been generally understood and known in that country?

A. What do you mean,—from the Hangover to the river?

Q. 10. Yes, whether or not from the Little Tennessee South the line runs up Slick Rock Creek, or up the Hangover Ridge or lead from the river to Hangover Haao?

A. I was always told that it ran up the lead.

Q. 11. Who told you?

A. Old man Jack Milligan and Atlas Crowder told me.

Q. 12. Who were they, Mr. Henry?

1371 A. They were citizens who were living in there. Old man Crowder lived between Big Fodderstand and Little Fodderstack.

Q. 13. How old was he then?

A. He looked to be something like fifty or sixty years old when I first saw him.

Q. 14. When did you first see him?

A. In 1875.

Q. 15. Is he living or dead?

A. He is dead.

Q. 16. Where did Milligen live?

A. Down on Talassee Creek, pretty close to the river. About a mile from Little Tennessee River, right where you turn to go up the mountain toward Little Fodderstack. There is a trail there that goes across. He lived there right in the fork of those trails and Talassee.

Q. 17. Do you mean where the path or trail from Cheoah coming through the Slick Rock Gap joined the trail down the Little Fodderstack to the river?

A. Yes sir.

Q. 18. That was a few miles from Slick Rock?

A. Yes sir.

Q. 19. How old was he when you first knew him?

A. About sixty years old.

Q. 20. Is he living?

A. No sir, he has been dead a number of years.

Q. 21. You knew him back in the seventies?

A. Yes sir.

Q. 22. And you say that these two men—Crowder and M[illegible]gan—told you that the line between North Carolina and Tennessee ran along the Hangover Ridge or divide?

A. Yes sir.

Q. 23. When did you hear, Mr. Henry, of any claim being made that the Slick Rock Creek country was in North Carolina?

1372 A. I don't know how many years after that. The first I ever heard of it was old man M. M. Belding. It was after the geological survey was made of that country in there. We got to talking about it and Mr. Belding said the State Line came down over the Big Fodderstack. I told him I never heard of it before and he pulled a map out showing where the geological survey was marked out down over the top of Fodderstack.

Q. 24. Do you know whether this Mr. Belding was claiming that land under some kind of conveyances from Thomas and others under North Carolina Grants?

A. He spoke of the timber as being his timber. I don't know who conveyed it to him. He was claiming the timber on Slick Rock.

Q. 25. He produced a geological survey map as proof of his claim.

A. He produced it to show me that the line came over the top of the Fodderstack.

Q. 26. Do you recall how long ago that has been?

A. That has been something like twenty years ago. I could not give the exact date. It was while I lived at the mouth of Abram's Creek in Blount County, Tennessee.

Q. 27. Did you ever graze any cattle up there on the mountain in the Slick Rock country?

A. Yes sir.

Q. 28. Who was living in there then?

A. A fellow lived at Nichols Cove by the name of Jeff Hamilton. Jim Farr lived there the year before and moved out. There was a man living at the head of Big Slick Rock by the name of Joe Woody. He lived at the old John Debity place.

Q. 29. Did you take any grazing rights in there?

A. Yes sir. I got the rights from Col. McCroskey. I leased the land from the creek to the top of Hangover Lead that runs down the river, or what was known as the State Line, from Col. McCroskey.

Q. 30. Did you ever take any grazing rights on the East side of the Hangover Ridge?

A. Yes sir, I went over to Mr. Dave Orr's in North Caro-
1373 lina.

Q. 31. Who was he?

A. He was a man who lived over there on the headwaters of Bear Creek. He lived between the Hangover Lead and Cheoah River.

Q. 32. Who was he representing?

A. He had the land leased from Andy Patton, who was the Agent of the Thomas heirs.

Q. 33. How far west did you take grazing rights from Mr. Orr?

Mr. SONDLEY: The State of North Carolina objects to this question because incompetent to show the location of the State Line by the declaration of some person who was acting as the agent for somebody who claims to know the line.

A. Dave Orr, who controlled the Thomas land, said that the line ran just below his little mill, from there straight west to the top of this Hangover lead, and that the corner was there on a chestnut, and ran from there back to Little Tennessee River.

Mr. SONDLEY: North Carolina objects to the statement of Dave Orr because he is still living.

Q. 34. Then, as I understand it, you got grazing rights from McCroskey on the Tennessee side up to the top of Hangover Ridge, and from Orr on the North Carolina side up to the top of the Hangover Ridge on the East side?

A. Yes sir.

Q. 35. Mr. Henry, you have referred to a number of people whom you knew to live in that country between Big Slick Rock and the Hangover Ridge, do you know where those people voted?

A. They voted at Mulberry, in Monroe County, Tennessee.

Q. 36. Do you know that of your own knowledge?

A. Yes sir, I saw Jim Farr, who lived in the Nichols Cove between Slick Rock Creek and the Hangover Ridge, come down to Mulberry and vote.

Q. 37. Is that the voting precinct in the Seventeenth Civil District of Monroe County, Tennessee?

A. Yes sir.

1374 Q. 38. Mr. Henry, have you been along the top of that Hangover Ridge?

A. No sir. I never was right over the Hangover up to the main top. I have been within about a half mile of the top of the Hangover back to where the river bends beyond the Bob Stratton Bald.

Q. 39. How far from the Stratton Bald have you been along the State Line?

A. To the head of Tellico River.

Q. 40. Do you know where Laurel Top is?

A. Yes sir.

Q. 41. Have you been there?

A. Yes sir.

Q. 42. State whether or not, in so far as you know, there is any

dispute about the State Line between Laurel Top and the Stratton Bald, coming toward the Little Tennessee River?

A. I have never heard of any dispute back to the Bob Stratton Bald from the Laurel Top back this way.

Q. 43. Do you know where the Fodderstack lead joins the main mountain?

A. Yes sir, right at the south end of the Bob Stratton Bald.

Q. 44. I will ask you to state whether coming from Laurel Top northeasterly toward the Little Tennessee River on the State Line the main ridge continues out over the Stratton Bald and the Hangover Mountains or peaks to the Tennessee River, or does the main ridge branch off at the Fodderstack lead?

A. A part of the ridge goes on out to the Hangover.

Q. 45. Do you mean the main part?

A. Yes sir.

Q. 46. Now, at the place where the Big Fodderstack lead joins the main mountain, how much lower is the top of the Fodderstack Ridge or lead than the top of the main mountain?

A. It is three or four hundred feet lower.

Q. 47. I will ask you to state, Mr. Henry, whether a man who did not know that there was a pathway leading down from the main ridge by way of the Fodderstack lead and coming from Laurel Top northeasterly toward the Little Tennessee River and on
1375 the top of the main ridge, would know when he passed the Fodderstack lead as he went on to the Stratton Bald?

A. No sir, he could not discover it from the top of the lead unless he looked away off down the country. He could not tell where to *to* turn off on the top of the mountain. The mountain just slopes off on each side like a housetop. There is no sign of the Fodderstack lead until you get down a quarter of a mile from the top.

Q. 48. Mr. Henry, are you acquainted with the line between North Carolina and Tennessee north of Little Tennessee River?

A. Yes sir.

Q. 49. How long have you been acquainted with this location?

A. Ever since along about 1875 or 1876. I had cattle herded for a number of years on the north side of the river.

Q. 50. You are a farmer?

A. Yes sir.

Q. 51. It has been your habit in the Fall of the year to carry your cattle to the mountain and herd them?

A. We either herded them on the north side on the Sanford land toward the Bald or along about the bend of the river.

Q. 52. How much of the State Line north of the river do you know about?

A. I know the line back to the top of the Gregory Bald.

Q. 53. Did you ever herd cattle on the top of the Gregory Bald?

A. No sir, our cabin was down at the Dalton Gap about three miles from the Gregory Bald.

Q. 54. Those places called "Balds" are points on the high mountain peaks upon which little timber and a great deal of grass grows, are they not?

A. Yes sir, there is no timber at all upon the balds.

Q. 55. Is there any timber upon the Stratton Bald?

A. There is a little there—upon the main bald it is naked.

Q. 56. Is the Hangover pretty free of timber?

A. Yes sir, it is just a rock.

Q. 57. Coming back to the north side of the river, is the 59th tree south or no-th of the Gregory Bald.

A. Going toward the river it is south.

1376 Q. 58. The 59th mile tree is between the Gregory Bald and the Tennessee River, is it not?

A. It is between the Gregory Bald and the Ridge Gap. It is just about one miles from the top of the Gregory Bald to the 59th mile tree.

Q. 59. Have you see- that tree?

A. Yes sir.

Q. 60. Do you know the location of the line coming south toward the Little Tennessee River from the 59th mile tree?

A. Yes sir, it is just a straight ridge—pretty well straight. It is down grade from that 59th mile tree to the Tennessee River.

Q. 61. Coming down that main ridge or divide from the 59th mile tree to the Tennessee River and looking south, what point over there on the south side most strikes the eye?

A. The Hangover Mountain. It is the highest point about there, and the top of it shows that it leans to one side.

Q. 62. How far back can you see Hangover on the north side of the river?

A. Any where from that bald. You can't get out of the *side* of it from that bald. Back as far as the 59th tree. From the bald to the river you have it in plain view.

Q. 63. Is that Hangover over there the most notable and natural object coming down the State line from the 59th mile tree toward the Little Tennessee River?

A. Yes sir.

Q. 64. How does it appear coming down from that 59th mile tree toward the river with respect to the ridge coming north to the river from the Hangover, does it seem that you are going approximately straight to the ridge that comes from Hangover down to the river?

A. Yes sir, you are going right facing it all the time.

Q. 65. Then coming down the north side from the 59th mile tree to the Little Tennessee River, that Hangover Mountain over there and ridge is right in your face all the time?

A. Yes sir.

Q. 66. I will ask you to state whether or not it is the more 1377 prominent and notable object on the south side to one standing on the north side of the river, than the Fodderstack Ridge?

A. The Fodderstack runs up into a big peak in the shape of a Fodderstack, and to the right is Slick Rock Creek, and the Hangover is the highest and most attractive, and the lead runs from that down to the river. As you are approaching you go straight down the State Line, toward the Hangover Ridge, while the lead from the Big Fod-

derstack is to the right and it makes an elbow and runs down to the forks of Citico Creek. Stiff Knee is a point between Little Fodderstack and the river. The two Fodderstacks are the highest points on that ridge.

Q. 67. Don't it run north of west?

A. Yes sir, when you are at the Bob Stratton Bald.

Q. 68. What is the "Stiff Knee"?

A. When you come past the Little Fodderstack you come to a very steep drop-off, right where the Telassee Mountain buts against this knee, and this is what we call Stiff Knee. The main lead drops south from there and runs down into the fork of what we know as the Salt Spring Mountain. The main lead that the Fodderstack is on makes an elbow just like a man's arm.

Q. 69. Do you know where that line on the north side of Little Tennessee River reaches the river?

A. When you *dome* down that ridge off down to where it makes the benches it gets lower all the way. It divides just like the fingers on your hand—the left hand prong just about the mouth of Cheoah River, and the middle prong runs right to the river opposite the Hangover lead, and the right hand prong goes to the end of the Pine Mountain opposite the mouth of Big Slick Rock.

Q. 70. Have you been at that place where the line on that middle ridge reaches the river opposite the Hangover lead?

A. Yes sir.

Q. 71. Have you seen that pine there?

A. Yes sir, it is the 65th mile tree on the bank of the river.

Q. 72. Marked Fore and aft tree?

A. Yes sir, and it had a little keel at the bottom of it,
1378 marked by the name of Hoyt they said.

Q. 73. What do you mean by "keel"?

A. Where the surveyor chopped out a little piece at the bottom of the tree and put a private mark there.

Q. 74. Did you know Mr. Hoyt?

A. Yes sir.

Q. 75. When did you first know him, Mr. Henry?

A. When he was in there surveying for Wetmore and Seymour.

Q. 76. Do you mean Mr. Charles Seymour, who is a lawyer here in Knoxville?

A. I wasn't acquainted with either of them.

Q. 77. Are you the son-in-law of Boyd McMurray?

A. Yes sir.

Q. 78. Do you remember Mr. Hoyt's given name?

A. No sir. I knew him back in the seventies. I don't remember what year he was in there. It was a number of years ago.

Q. 79. How old a man was he at that time?

A. Tolerably old man—very gray.

Q. 80. As much as sixty you think?

A. Yes sir.

Q. 81. More than that?

A. He might have been. He stayed there all Summer—he was pretty gray headed.

Q. 82. Do you know whether he is living or not?
A. No sir, I do not. I think he is dead though.
Q. 83. State whether or not he ever told you about running that State Line south of the river?
A. I don't know that he did. I heard him talking about it with McMurray and others.
Q. 84. I will ask you to state if you ever heard him say whether the line run up Slick Rock Creek, or up the Hangover Ridge or lead from the river?

Mr. SONDLEY: The State of North Carolina objects to the declarations of Mr. Hoyt upon the ground that no sufficient foundation has been laid for their introduction as evidence.

1379 A. I can't say that I ever did.

Cross-examination.

By Mr. SONDLEY:

Q. 85. You stated, I believe, that when you first became acquainted with the Slick Rock country, a man by the name of Atlas Crowder lived at Nichols Cove?
A. No sir, Crowder lived between the Big Fodderstack and the Little Fodderstack.
Q. 86. Who was it that lived at Nichols Cove?
A. Jim Farr.
Q. 87. You said something about a man by the name of Hamilton—who was he?
A. Farr traded out to Hamilton and Hamilton lived in there for a few years. Hamilton lived there when I took my cattle there.
Q. 88. And that was what year?
A. When Hamilton lived there it was about the year 1890.
Q. 89. When was it that Woody lived in there some where?
A. About the same time. Woody lived at the head of the creek at the old Debity place.
Q. 90. And that was as early as 1890, you think?
A. Yes sir.
Q. 91. What Woody was that?
A. Joe Woody.
Q. 92. Didn't Woody move in there later than that?
A. No sir, I don't think so.
Q. 93. Where was it that Crowder lived between Little Fodderstack and Big Fodderstack—on the mountain or down on the side of the mountain?
A. On the crest of the ridge. The ridge dips up and down, and he lived about the top of that ridge.
Q. 94. That would be in Tennessee according to the contention of both North Carolina and Tennessee in this controversy, would it not?
1380 A. Yes sir.
Q. 95. When was it you say he told you where the State Line was?

A. In the year 1875. When I first moved to that country I took my cattle out to old man Crowder's to herd.

Q. 96. How did he happen to be talking about the State Line?

A. We would see that big Hangover over there and I was asking him what these points were and he said the Hangover and Bob Stratton Bald, and he said the State Line was marked right along the top of that.

Q. 97. Did he point out the Fodderstack to you at the time?

A. I knew where the Fodderstack was and he did too.

Q. 98. You knew where that was?

A. Yes sir.

Q. 99. Did you talk about the Big Fodderstack any at that time?

A. Yes sir, we talked about every peak.

Q. 100. When was it that Jack Milligan told you about the State Line?

A. When I first took my cattle up to Crowder's to herd.

Q. 101. How did he happen to be talking about it?

A. We were talking about where Crowder's range reached to.

Q. 102. What did Milligan say?

A. He said the State Line ran up that Hangover Lead from the river.

Q. 103. Where did Milligan live at that time?

A. On Tallassee Creek on the trail going through Slick Rock Gap and the trail going over Fodderstack.

Q. 104. That is in Tennessee according to the contention of both sides, is it not?

A. Yes sir.

Q. 105. Where did Jim Farr live when you saw him voting at Mulberry?

A. The first time I ever saw Jim Farr vote at Mulberry he lived in Nichols Cove.

Q. 106. What year was that?

A. I can't say just what year.

Q. 107. You couldn't tell just what year?

1381 A. No sir, I couldn't say. He always came to the elections down there. He came several years.

Q. 108. What about the Debity people—some of them ran away from Tennessee and went up there, did they not?

A. The Debitys were living up there the first I ever knew of that country. Old John Debity lived up there the first I knew of that country.

Q. 109. You say that as early as 1875 John Debity was living up there in the Slick Rock neighborhood?

A. I don't know that John Debity lived there in 1875—I wouldn't be positive. When I was acquainted with the Debitys the first time they lived at the head of the creek.

Q. 110. You won't undertake to say that it was as early as 1875?

A. No sir. I am not positive that Debity lived at the head of the creek at that date.

Q. 111. Do you know where he lived at that time?

A. I don't know that I do. I am not positive that I was

acquainted with Debity at that time—it might have been a few years later than that.

Q. 112. He went in there to get out of the way of some process had in Monroe County, did he not?

A. I don't know. A good many of them did go back in there for that purpose, but I don't know anything about Debity having done so.

Q. 113. You said that the first recollection you had of that country was when you got a lease from Col. McCroskey and went in there to herd or graze cattle?

A. Yes sir.

Q. 114. That was the land in there on Slick Rock had been entered as in Tennessee by somebody, was it not?

A. That wasn't the first herding I did there. The first was in 1875.

Q. 115. I am asking about the first lease you had there?

A. The first was from Col. McCroskey.

Q. 116. That was subsequent to the time that the land was entered by some one as being in Tennessee?

1382 A. I don't know who entered the land. That was the first cattle I had herded on the east side of Slick Rock.

Q. 117. The first herding you did on the east side of Tennessee River from Slick Rock was under the McCroskey lease.

A. Yes sir. I had cattle herded as far back as 1875 at the head of Slick Rock—I mean Big Slick Rock Creek.

Q. 118. What date was that you got the lease from Col. McCroskey?

A. I took the lease in 1890 or 1891. In the year 1891 Jim Farr herded for me between the creek and the top of this ridge on the east side of the creek.

Q. 119. Now you spoke of the 65 mile tree being a pine on the bank of the Tennessee River?

A. That is the way I understood it. The man showed me a spruce pine as the 65 mile tree.

Q. 120. Was that on the northern bank?

A. Yes sir.

Q. 121. On the Swain County side?

A. Yes sir.

Q. 122. Your only knowledge that that was the 65 mile tree was his declaration?

A. He showed me that keel at the bottom of the tree. I did not examine the tree. It had a little keel at the bottom marked with a little red paint.

Q. 123. Your only reason for thinking that it was the 65 mile tree was his declaration?

A. Yes sir.

Q. 124. Who told you where the 59 mile tree was?

A. I don't remember whether it was Jim Wilson or Bill Hale—one or the other of them. I believe it was Bill Hale.

Q. 125. Mr. Hale was a witness for Tennessee in the controversy over the State Line before, was he not?

A. I believe he was.

Q. 126. Who was Wilson?

1383 A. Wilson owned land there and was a surveyor.

Q. 127. Where did he live?

A. He lived at Maryville.

Q. 128. How did it happen that you were enough interested in these matters to go down there where the State Line approached the Tennessee River?

A. I was hunting cattle. Hale was not with me—he only described it to me. He stayed all night with me and described it to me and I went and looked at it.

Q. 129. Who was with you when you went down to the river.

A. Albert Nichols.

Q. 130. What was his business?

A. He was a herder.

Q. 131. You didn't find any figures on either tree did you?

A. I didn't on the 65 mile tree—I did not go to the other.

Q. 132. Did you find the 65 mile tree—the one at the river?

A. We passed as close to it as from here to that stand going down to the river.

Q. 133. You spoke of going from Laurel Top to Stratton Bald and what the appearance would be presented to you of the Fodderstack ridge in passing along there, in order to make that trip you would not be going south, but northwardly, would you not?

A. You would be going principally north—zigzags about—You would go over the —— through the Stratton meadows, and then come on down through the Haao to the Hangover, thence down to the river.

Q. 134. You say in coming that direction you would be going northwardly—that is, in the direction of the Tennessee River, approaching it from the Georgia way?

A. Yes sir.

Q. 135. What direction is the main ridge, running down toward Cheoah River or running down toward Tennessee River?

A. A prong from the Hangover runs toward the Cheoah and one toward the Tennessee River.

Q. 136. The one toward the Cheoah is the main one or the highest one, is it not?

1384 A. I expect it is the highest. There is two.

Q. 137. The one going toward the Hangover is lower than the ridge going toward Cheoah?

A. Yes sir.

Q. 138. And then when you go out toward the Hangover you find it pretty rough going toward the Tennessee River, do you not?

A. No sir, only when you start down. I never went right up to the rock. I have been within a half mile of it.

Q. 139. The mountain drops there for 800 or more feet does it not?

A. I don't know how much it drops. I never went up to the point. I just went down to where it struck the ivy. It appears pretty steep from there up to the Hangover.

Q. 140. The Big Fodderstack is a very prominent object, is it not?

A. Yes sir, you can see it from all along that country.

Q. 141. In approaching from the Tennessee River to the Stratton Bald, the access would be easier up by Big Fodderstack than up over Hangover.

A. You mean to go up from the Tennessee River?

Q. 142. Yes sir.

A. I don't know that it would. You can't go to the Fodderstack without going down in there and crossing Stratton Creek.

Q. 143. You can go up by Little Fodderstack, can't you?

A. Yes sir, but that is eight or ten miles down the river.

Q. 144. Suppose you were to start from Gregory Bald and go along the direction that the ridge takes, what would be your course?

A. Pretty near due south.

Q. 145. It would be west of south, wouldn't it?

A. Yes sir.

Q. 146. Suppose you were to go from there in the direction of Hangover, what direction would you have to take if you disregarded the ridge?

A. About the same way—mighty near south.

Q. 147. You think then the two points in the same direction?

A. Yes sir, almost. The one on this side of the river may
1385 be a little below.

Q. 148. Suppose you were to look along the direction you were going, which would be in front of you, Big Fodderstack or Hangover? Which would be in front of you of those two points?

A. Going down from the Gregory Bald—it is owing to where abouts you were on the ridge that leads from the bald. Just a little ways from the top the Fodderstack would face you, but after getting down to the road toward the bend the Hangover would face you—it is right in front of you almost. The Hangover is shown to be a great deal the highest.

Q. 149. The Little Fodderstack would be to your right until you get within a half mile of the river?

A. Yes sir.

Q. 150. And the Hangover to your left?

A. It might be in places but when you get down to the bend of the river the Hangover is facing you.

Q. 151. I am speaking from the Gregory Bald as you go along?

A. Going from the Gregory Bald to the Dalton Gap, the Big Fodderstack is directly in front of you most of the way. On the far side of the river the Hangover is shown to be higher than any of them—steeper than any of them.

Q. 152. What is the general direction of the ridge from the Bob Stratton bald down the Haao and Hangover?

A. I would think that the general direction before reaching the steep point is pretty near due north—it looks that way. I am not very well acquainted with the directions up there. It looks to me like it is north.

Q. 153. You never saw a compass put on it?
A. No sir.

Redirect examination.

By General CATES:

Q. 154. You were asked about Debity going from some place that is indisputably in Monroe County off into the Slick Rock country to escape from an officer, and I understood you to say that
1386 many oftentimes went in that direction, and went across the State Line too over into North Carolina?

A. Yes, sir, when they got warrants for those fellows along the State Line there, they crossed over to get away from the sheriff.

Q. 155. Do you mean that when they got warrants for them on the Monroe County side they would go over Hangover Ridge into North Carolina, and when they got warrants for them in North Carolina they would cut across over to the west side of the Hangover?

A. Yes sir.

Q. 156. You say you don't know anything about Debity running from the officers?

A. No, sir, I don't know what Debity did.

Q. 157. Do you know anything about him coming down to Mulberry to vote?

A. No sir, I didn't see him.

Q. 158. Did he claim to live in Tennessee?

A. Yes sir.

Q. 159. Now, you were asked about a tree—a spruce pine or hemlock—on the north side of the Tennessee River, which you or counsel, I don't remember which, referred to as the 65th mile tree, and asked if you saw any numbers on it. Did I understand you right in saying that you did not examine that tree?

A. Yes sir.

Q. 160. How far above the mouth of Slick Rock Creek was it?

A. About a half mile.

Q. 161. Now, you were asked about Hale and Wilson—is Wilson living or dead?

A. He is dead.

Q. 162. Was that James K. Wilson, one of the most noted surveyors in that country?

A. Yes sir.

Q. 163. You were asked about the easiest way to get from the north side of the river up to Hangover or Big Fodderstack, and you referred to Slick Rock Creek as being somewhat rough. I will ask you to state if the Slick Rock Creek doesn't come down through a gorge in places that is almost impassable.

1387 A. Yes sir, it is mighty hard to get up it. The creek is very rough especially from the river up to the Big Stack, as we call it.

Q. 164. Now, you were also asked about coming down off of the Gregory Bald to Dalton Gap, how far is that?

A. It is something like two and a half or three miles.

Q. 165. And you said that coming down that way the Big Fodderstack was somewhat in your face—I will ask you if the Hangover lead wasn't also in plain view over there as the highest point on the south side of the river?

A. Yes sir, you can see them both.

Q. 166. Now then from the Dalton Gap on toward the river, the Hangover Mountain and the lead coming to the Little Tennessee River from the Hangover Mountain is right in your face, isn't it?

A. Most of the way the Hangover is almost right in front of you, and this lead that comes down from the Hangover elbows and comes right back. They are both crooked.

Q. 167. In other words, the line that follows the meanders of the top of the mountain is rather crooked on either side of the river?

A. Yes sir.

Recross-examination.

By Mr. SONDLEY:

Q. 168. The Hangover is a peak is it not?

A. Yes sir.

Q. 169. It is pretty high?

A. Yes sir.

Q. 170. You said that Slick Rock Creek is pretty rough, hard to get through—you can make slight detours and go through there, can't you?

A. There is a trail that runs up out of the way of the creek—something like a quarter to a half mile, that you can go through. That is the way we traveled going up the creek.

Q. 171. You said in your cross-examination that people when seeking to avoid arrest in Tennessee would go over into the Slick Rock country to hide?

1388 A. Yes sir, I meant that when pursued on either side he flees over the line—just so he was satisfied he was over the line.

Q. 172. Did John Debity, since you knew him, ever live east of Slick Rock Creek or east of Hangover Ridge.

A. He lived right down on the creek on the east bank of Slick Rock, but did not live over Hangover Ridge.

Q. 173. You do not know of John Debity living later on in what is now unquestionably Tennessee, do you? Further to the West of Slick Rock?

A. John Debity lived on Slick Rock Creek until he broke up housekeeping. After that he lived with some of his boys on White Oak Flat.

Q. 174. Where is White Oak Flat?

A. It is between the top of the main big mountain and Tellico Plains.

Q. 175. Anybody question that being in Tennessee?

A. No sir.

Q. 176. Jim Farr also lived for a good many years after moving from up there in what is now unquestionably Tennessee, didn't he?
A. Yes sir, and lives there yet.

The further taking of depositions was here adjourned until 2:00 P. M.; at which time the same was resumed pursuant to adjournment.

PLEAS. HENRY recalled by North Carolina, for further Cross-examination.

By Mr. SONDLEY:

Q. 177. What was your father's name?
A. Pleasant Henry.
Q. 178. Where did he live?
A. Do you mean where he died?
Q. 179. Yes, where he lived during his lifetime?
A. He sold goods for a few years on Little River and moved from there to Murphy, North Carolina, and lived there about thirty odd years. I was born at Murphy, North Carolina.
Q. 180. Can you tell when you left there?
A. I left there just a month or two before peace was made at the wind up of the war.

1389 Redirect examination.

By General CATES:

Q. 181. In some part of your cross-examination Mr. Henry, you referred to a man by the name of Woody as having lived at one time in the territory between the waters of Slick Rock Creek and Hangover Ridge—what was Woody's name?
A. Joe Woody.
Q. 182. Where abouts did he live?
A. At the old John Debity place.
Q. 183. That is between the headwaters of Big Slick Rock and the Hangover Ridge?
A. Yes sir, almost on the bank of the creek—east of the creek.
Q. 184. Do you know anything about Joe Woody being indicted in the United States Court at Asheville for violating the Federal Internal R-venue Laws?
A. I know that the Revenue Officer, Pat Rose, taken him out of there.
Q. 185. Where did he take him?
A. It was said they took him to Asheville.
Q. 186. Do you know whether he was convicted?

Mr. SONDLEY: The State of North Carolina objects to this question, because irrelevant and immaterial, and because it appears that the witness is speaking from hearsay.

A. I don't know.

Q. 187. At that time was Woody running an illicit still? In there where he lived?

A. Yes sir, that was the report.

Q. 188. Now, after he came back from Asheville, state whether this same Joe Woody was brought before the United States Circuit or District Court at Knoxville for violating the Federal Internal Revenue Law at that same place?

Mr. SONDLEY: The State of North Carolina objects because irrelevant and immaterial, and because it appears that the witness is speaking from hearsay.

A. Yes sir.

1390 Q. 189. Do you know what officer brought him here?

A. No sir I do not.

Q. 190. Do you know whether that same Joe Woody was convicted here at Knoxville.

Mr. SONDLEY: The State of North Carolina objects because irrelevant and immaterial, and because it appears that the witness is speaking from hearsay.

A. Yes sir, he was.

Q. 191. For violating the State Revenue laws at that place where he lived?

Mr. SONDLEY: The State of North Carolina objects because irrelevant and immaterial, and because it appears that the witness is speaking from hearsay.

A. Yes sir.

Q. 192. Now about what year was that, Mr. Henry?

A. In 1892 or 1893—I had cattle herded there both years—it was while I was out there.

Recross-examination.

By Mr. SONDLEY:

Q. 193. What you say about Woody is hearsay, you say?

A. About his arrest is hearsay. I knew him personally.

Redirect examination.

By General CATES:

Q. 194. You knew him personally and knew where he lived?

A. Yes sir.

Q. 195. And he lived between Slick Rock and Hangover?

A. Yes sir.

Q. 196. How long has your father and grandfather been dead?

1391 A. My grandfather died two years after the war. My father died in 1877.

Recross-examination.

By Mr. SONDLEY:

Q. 197. Didn't your father enter some land in this same neighborhood not very far from the State Line?
A. No sir.
Q. 198. You didn't know that he was making entries there?
A. No sir, my father sold goods pretty near all of his life.
Q. 199. Do you know where Woody's "still" was?
A. I know about where it was—I expect I know pretty much where it was.

Redirect examination.

By General CATES:

Q. 200. And that "still" was between Slick Rock Creek and Hangover?
A. Yes sir.

And further deponent saith not.

PLEAS. HENRY.

The witness' name is signed to the deposition by consent of the parties by the Clerk of the Supreme Court.

Sworn to before me and signed as above stated. This the 28th day of November, 1910.

S. E. CLEAGE,
Clerk, Supreme Court.

Witness 1 day,
Mileage 78 miles.

1392 MILTON WILLIAMS, next witness, being duly sworn deposed and said:

Examined by Gen. CATES:

Q. 1. What is your name, age and where do you now live?
A. My name is Milton Williams, I live in Monroe County, Tenn., my age is 58 years.
Q. 2. What part of Monroe County do you live in?
A. The 16th District, the east end of the county.
Q. 3. On what waters if any?
A. Citico Creek, on the waters of Citico Creek.
Q. 4. How long have you lived there?
A. Well, sir, I have been there about 18 years where I live now, except I was off a little while over towards North Carolina about three years.
Q. 5. Where did you live before you moved to Monroe County?
A. I lived in North Carolina.
Q. 6. In what part of North Carolina?
A. Graham County.
Q. 7. In what part of Graham County?

A. Well now I forget the Township, it is that Yellow Creek Township there next to the State line where the State line goes on up.

Q. 8. Yellow Creek runs into the Little Tennessee River between Hang Over ridge or lead and Cheoee?

A. No, it runs into Cheoee, and Cheoee runs into the Tennessee.

Q. 9. How far did you live from Hang Over ridge?

A. In sight of it pretty well all the time; I don't know exactly; four or five miles, along there.

Q. 10. You are a farmer?

A. Yes, sir.

Q. 11. Did you farm in North Carolina?

A. Yes, I was brought up there, principally raised on the North Carolina side, and a Tennesseean by birth.

Q. 12. What do you mean by the North Carolina side?

1393 A. I mean the east side of Hang Over lead there, the North Carolina side.

Q. 13. State whether or not Hang Over ridge or lead is considered on the boundary line of the two states?

A. It was always considered the State line. I never heard it disputed in my life until this trouble come up.

Q. 14. Then you folks who lived on the east side of Hang Over ridge or lead were considered as living in North Carolina, and those on the west side considered as living in Tennessee?

A. Yes, sir.

Mr. SONDLEY: The State of North Carolina objects to this testimony as leading and irrelevant.

Q. 15. Have you ever been on what you have described as the line between the two states?

A. I have been across it different times, across through the gap—the Slick Rock Gap—where they said the line run.

Q. 16. Coming from Yellow Creek to Tennessee where would you cross the line between the States?

A. It is I reckon something like three quarters or a mile from Slick Rock Creek to the trail or pass-way, through, the Indian trail runs in the gap and across the main divide from Hang Over to the river.

Q. 17. What is that gap called?

A. Slick Rock Gap.

Q. 18. Have you ever had that line pointed out to you?

A. Yes, sir.

Q. 19. As the line between the States of North Carolina and Tennessee and if so by whom?

A. By my grand-father, Ben Johnson and an old fellow*ed* named Mack Carr who used to own a farm on the river there.

Q. 20. Carr?

A. Yes, Mack Carr.

Q. 21. And who else?

A. There was an old man named Deaver, he never pointed it out but I heard him talking. He was an old Revolutionary

1394 soldier and they would send stock out from the farms in the hills and charged the men seeing after them not to let them

cross the divide; they would go into Tennessee and Tennessee might take the stock up.

Q. 22. You mean they would cross the Hang Over divide?

A. Yes, they charged them not to let the stock get over that.

Q. 23. Do you know a man named William Williams?

A. Yes, sir.

Q. 24. Did he ever point out a line to you as running along Hang Over lead?

A. I don't know just exactly whether he did or not, but it was always understood, and it was the understanding with him too that that lead was the line.

Q. 25. What did you hear him and Johnson and Carr say about that.

Mr. SONDLEY: The State of North Carolina objects to declarations of Johnson and Carr.

A. Carr had some stock on the Blount County side and would come to get it.

Q. 26. Was that north of the river?

A. Yes, on the Blount County side. And he and my grand father were there one morning,—he lived at the toll gate with him at that time.

Q. 27. What toll gate?

A. On the turn pike road leading across the mountain.

Q. 28. From Blount County, Tennessee, in Swain County, North Carolina?

A. Yes, they were going one morning and asked me to go with them. I was a right small boy big enough to drive cattle and we went, they rode and I walked and they run on the cattle and they stopped on the state line or lead and fed their horses with corn they had and they pointed it out with their sticks and were telling where it come around from Hang Over down, you could see it as plain as the river from here; you could see the lead all the way on top of the Smoky Mountain on the east side, or north side of the river. And they said, as well as I remember, it run around the mountain they called the "Hao" but I don't know about that.

Q. 29. You remember they used that name?

A. Yes, the "Hao."

1395 Q. 30. They pointed out Hang Over as being the line on the south side of the river?

A. Yes, they talked about the divide and state line and I was there with them and heard it.

Q. Did they say anything about where the line crossed the river?

A. Something was said but I don't remember exactly, but something was said about half a mile above Slick Rock, but I will not say how they said it: I never could get it. I never though much about it until Mr. Griffith talked to me. I remember the half mile part of it, but not what it was.

Q. 32. They pointed out that place on the north, and the Hang Over on the south side as being the line?

A. You could see the divide from the Hang Over plumb on down the river.

Q. 33. You say this was your grand father Ben Johnson and Mack Carr?
A. Yes, sir.
Q. 34. Are they living?
A. No, both dead.
Q. 35. How long has Carr been dead?
A. I don't know I suppose 25 years.
Q. 36. How long has your grand father Johnson been dead?
A. About 35 years, may be a little longer.
Q. 37. Were they young or old men when they were talking there?
A. Old men both of them. My grand father was an old Revolutionary soldier, grand father Johnson was. I don't know whether Carr was or not.

Cross-examination.

By Mr. SONDLEY:

Q. 38. Both of them knew where the State line was?
A. That was their talk.
Q. 39. They stood and pointed it out?
A. Yes, well I won't say whether they were standing or sitting, but anyhow they pointed it out.
Q. 40. To each other?
A. Yes, just talking, same as we would talk about something.
1396 Q. 41. Didn't that strike you as a little strange? That men who knew something would sit down and talk about it without a reason?
A. Oh, no, not a bit strange.
Q. 42. Wasn't it strange that they would talk about things with no reason for it?
A. Not a bit strange; I don't know whether they had a reason or not, I know they talked it.
Q. 43. And you don't think it was strange?
A. They might have had a reason or they would not have talked.
Q. 44. You didn't mean it was not strange then. How long did they talk about it there?
A. I don't know, a few minutes, may be half an hour, as long as we stayed and rested.
Q. 45. They kept up the conversation all the time they were there?
A. I don't know that they did but they talked that over.
Q. 46. Went into all the details, how it ran?
A. Yes, talking about the way the line came down the divide there.
Q. 47. They didn't talk about how it lay over about Georgia?
A. On the side we were on?
Q. 48. I mean on the Georgia border? About Ducktown or Tellico?
A. I don't think so.
Q. 49. They didn't say anything about Cataloochee?
A. They only talked about what was in sight.

Q. 50. They didn't talk about that side of the river?

A. Which?

Q. 51. The one you were on?

A. Yes, they were talking about that line that led to the river.

Q. 53. They talked about it from where you sat to Hang Over?

A. I understood their talk about the mountain there was the divide and they talked from the side we were on to the river.

Q. 54. You never heard it being called the state line at another place until later you say. Now when was the first you heard of the state line being at another place than Hang Over?

1397 A. Since this trouble came up.

Q. 55. What do you refer to?

A. I cannot tell how long.

Q. 56. Do you know what you refer to?

A. I don't know how long ago it has been, but a good while.

Q. 57. What is the trouble?

A. I suppose a dispute between Tennessee and North Carolina about the line.

Q. 58. When did you first hear of their being some dispute?

A. I don't remember; a good while; about the time I reckon the suit come up.

Q. 59. Give your recollection when it was?

A. I cannot tell.

Q. 60. Approximate it?

A. Several years back, a man never taxes his mind with anything he is not interested in more than I am in that.

Q. 61. You could not give an approximation?

A. I don't think so.

Q. 62. Where were you living at the time you first heard of the controversy?

A. At the toll gate.

Q. 63. On Citico?

A. No,—well, yes, I am getting too far ahead,—I was living on Citico I believe.

Q. 64. Will not that enable you to determine when?

A. It has been,—well I have been living over there 18 years,—and I heard it before.

Q. 65. Before 18 years?

A. I don't know about 18 years but somewhere along there, some such length of time, I will not say what time.

Q. 66. You never heard anybody in that neighborhood talking about it as being anywhere else except on Hang Over ridge until you heard of the controversy?

A. If I did I don't remember it.

1398 Q. 67. Between North Carolina and Tennessee?

A. Yes, sir.

Q. 68. And that was when the suit between the two states came up?

A. Yes, about the trouble and difference about the state line.

Q. 69. Didn't it strike you as a little strange that the United States Government had it on its map if there was nothing of that sort talked about?

A. No, sir.

Q. 70. Yet they have it on their map?

A. I don't know whether they had it on the map.

Q. 71. Don't you know Tennessee had years before adopted a map showing it run up Slick Rock?

A. I don't know.

Q. 72. You never heard of that?

A. No, sir.

Q. 73. Why were not people entering this line if it was in Tennessee?

A. I don't know about that neither.

Q. 74. You didn't hear of any one entering that land during that period?

A. No, I couldn't tell about that. I couldn't tell anything I don't know about.

Q. 75. Whereabouts on Yellow Creek did you live?

A. Sorter on the upper end, and lower end, two or three places.

Q. 76. You moved about some while you lived there?

A. Yes, sir.

Q. 77. About how near the river did you live?

A. One mile I reckon.

Q. 78. Above the mouth of the river on Yellow Creek?

A. Yes, sir.

Q. 79. How far is that from Hang Over?

A. Three or four or five miles. I couldn't tell exactly: it is in sight all the way.

Q. 80. There is a pretty high mountain there in sight for some distance.

A. Hang Over is about the highest from Yellow Creek close there.

Q. 81. You said something about William Williams telling you something about it?

1399 A. I don't know as I said he told me; I said it had always been the understanding.

Q. 82. How do you know his understanding if he didn't tell you something? How could you know William Williams' understanding unless you heard him say?

A. I heard him say.

Q. 83. What?

A. I don't remember what all.

Q. 84. When did you hear it?

A. Sir.

Q. 85. When did you hear William Williams speak?

A. Twenty five or thirty years ago.

Q. 86. What did he say?

A. I don't remember: nothing much no way; that was the understanding and always has been the understanding; I never heard it disputed by anybody.

Q. 87. Did he say it was the understanding?

A. I don't remember that he said, that or anything about it, but it was called the state line.

Q. 88. Is that the nearest you can tell about what William Williams said about it?

A. Yes, sir.

Re-examination:

Q. 89. Are you related to William Williams?

A. Yes, sir.

Q. 90. What relation?

A. He is an uncle of mine, the one I am talking about the one as a witness in North Carolina, he went up here sometime back. I understand there are two or three Wm. Williams but this is an uncle of mine.

Q. 91. He was at that time a very old man?

A. Yes, getting old, towards 80 now.

Q. 92. You cannot recall the words but the substance was
1400 recognition of that line along Hang Over?

A. Yes, that was always the understanding.

Q. 93. Now you have referred to not having heard that Hang Over line disputed until about the beginning of this trouble, and a reference was made to the suit instituted by North Carolina against Tennessee. You don't know just precisely when that suit was instituted?

A. No, sir.

Q. 94. There has been some controversy there for some ten or 12 years in regard to claimants under North Carolina grants and claimants under Tennessee grants?

A. Yes, sir.

Q. 95. Was that what you referred to?

A. Yes, sir.

Q. 96. Is that since you have been in Monroe County?

A. Yes, I know parties lived there on what I called the Tennessee side that come to our precinct to vote or a portion of them.

Q. 97. Who are they?

A. Jim Farr and Dit Moore and Dotson.

Q. 98. Onley Dotson?

A. John Dotson the one I speak of. Onley lived there somewhere; I don't know whether he came down or not.

Recross-examination:

Q. 99. Where does Dit Moore live?

A. On the waters of Slick Rock.

Q. 100. Where does Dotson live?

A. The one I speak of in Nichols' cove. Unless he has moved away lately.

Q. 101. Where does Farr live?

A. Farr lived in different places on the mountain near the fodder stack there for years.

Q. 102. Near little Fodder Stack?

A. I don't know which is little or big I know they called it fodder stack where he lived.

1401 Q. 103. Little Slick Rock Creek is not in dispute here, whether it is in Tennessee or not, and it is admitted by everyone to be in Tennessee?

A. I don't know where the line is there or a thing about it.

Q. 104. You first said you heard this when this suit arise and now you say you don't mean that. Is that so?
A. Say what when the dispute arose?
Q. 105. Didn't you say you first heard the dispute about the state line not being on Hang Over when this suit arose?
A. That is the first I heard.
Q. 106. You say you don't know when the suit arose?
A. I don't know anything about that Slick Rock lead.
Q. 107. Do you know when this suit arose?
A. No sir.
Q. —. How can you say then when the dispute arose?
A. I told you a while ago I didn't know when it was.

Re-examination:

Q. 109. Jim Farr lived at one time in Nichols' Cove?
A. Yes, though I never was there.

Recross-examination:

Q. 110. How do you know where Dotson lived?
A. I heard him say so and he asked me to take a hunt with him over there.
Q. 111. You are not testifying what Dotson knows?
A. No, not at all.

And further saith not.

MILTON WILLIAMS.

Subscribed and sworn to before me this 28th day of Nov. 1910.
S. E. CLEAGE.

One day and 78 miles.
The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

1402 ONLEY WILLIAMS, next witness duly sworn, deposed and said:

Examined by Gen. CATES:

Q. 1. How old are you?
A. 48 this spring.
Q. 2. Where do you live?
A. Graham County North Carolina.
Q. 3. What is your occupation?
A. I farm.
Q. 4. How long have you lived in Graham County N. C.
A. The last time about four years, but most of my life in Graham County. I moved away about 25 years ago or 30 years ago and lived 18 years in Monroe County Tennessee but most of my life I lived in North Carolina, I moved back there.
Q. 5. Do you know D. B. Burns?
A. Yes sir.
Q. 6. When and where did you get acquainted with him?

A. Two years ago last March helping to run the State line, this March past two years ago, March 1908.

Q. 7. Do you know where Burns is now?

A. I don't know. Some of them are near my house surveying on the railroad there. I don't know whether they were all there.

Q. 8. Do you know whether that is D. B. Burns who surveyed that line for the Hopkins or Belding or Thomas claimants?

A. The same man.

Q. 9. Where did you meet with him?

A. They passed by my house and got me to help them.

Q. 10. Where did you go?

A. To the top of the Smoky Mountain where the road crosses from Blount County going into Swain.

Q. 11. There is only one public road from Blount County Tennessee to Swain County N. C.?

A. That is all.

1403 Q. 12. How far is that north of the Tennessee River?

A. At the top of the mountain not over a mile and a half or two miles, the river runs parallel with the ridge keeps along with it and this other way it goes kind of west and it is three or four miles to the river, but due north it is not over a mile and a half to the river, hardly that far for the 640 acre tract reaches to it in some places, not over a mile in some places.

Q. 13. What did Mr. Burns do coming down that line?

A. He was wanting to run the line, the state line and find where it went.

Q. 14. Where did you find it?

A. We set in on top of the Smoky Mountain and where the ridge forks and we took the left hand ridge and there we found the hacks; down the left hand ridge; we found the hacks down that ridge.

Q. 15. Going towards the Tennessee river you took the left hand ridge which runs to the river about the mouth of the Cheoee river?

A. Yes below the mouth of Cheoee river.

Q. 16. You found hacks?

A. Yes sir.

Q. 17. What kind?

A. Three hacks, we generally cut one side and we blocked a good many trees and found nothing but we found three hacks near to the heart of the trees,—three hacks.

Q. 18. Then what other ridge did you run?

A. We went part of the way first on the left and raped in between these ridges. The next day we put in hunting the right hand ridge running into the mouth of Slick Rock and blocked it out and found nothing.

Q. 19. After running the left hand ridge or the one that goes in the direction of the mouth of Cheoee river, you went back to the top of the main ridge and run down a ridge that leads off in the direction of the mouth of Slick Rock Creek?

A. Yes sir.

Q. 20. Did you find any marked trees on that ridge?

1404 *Q.* That is the one I speak of we cut that ridge out and found nothing.

Q. 22. Could you run down that ridge leading from the main ridge to Slick Rock?

A. Yes, handy.

Q. 23. Was there any difficulty?

A. No, it was a little rocky toward the river, but we went down it.

Q. 24. Then what did you do?

A. We measured the river; then back up to where this other ridge come down, the left hand ridge, and we finished that ridge up then and blocked it out down to the river.

Q. 25. State whether or not you ran out the ridge straight to the river from the fork to the point opposite the Hang Over lead?

A. It is right opposite Hang Over.

Q. 26. The right hand ridge leads to Slick Rock?

Q. Yes sir.

Q. 27. What did you find?

A. On the middle ridge?

Q. 28. What did you find on the middle ridge to the river opposite the bluff of Hang Over?

A. We found hacks and counted and we cut one out of the block, we blocked them and we found one on a black oak and one out of a hickory after the ridges divided; and one out of a hemlock and we counted them and we found sixty six growths,—we had to count little holes or dimples in the hickory and we all gave in eighty six growths,—not sisty six but eighty six growths. Burns gave it in that and the rest of us.

Q. 29. Did you stay with him any longer?

A. No, he was fixing to cross the river and I never went there, I went home.

Q. 30. You didn't go on the south side from here?

A. No sir.

Q. 31. What do you know in regard to the location of the line on the south side of the river from the point opposite where you found the spruce or hemlock on the other side?

1405 A. I couldn't tell, I never helped there on that side. This ridge comes in opposite Hang Over, the hacks we cut out. I know some lines but was not present when they were run.

Q. 32. Have you ever heard old people talk about the line on the south side?

A. I have heard different tales but of no benefit to either one, some tell one thing and some tell another.

Q. 33. Going back to that point on the state line north of the river about where the turn pike crosses it from Blount County Tennessee into Swain N. C., and going south toward the Little Tennessee River, what is the most prominent and notable object on the south side of the river?

A. Hang Over is the nicest lead and shows up the most beautiful, the high lead to the river.

Q. 34. From the ridge on north side of the river is the ridge leading down from Hang Over to the river opposite where you

found that marked spruce pine or hemlock, a well defined ridge clearly in view?

A. Yes up a little piece from the river Hang Over divides and there are some spurs, one runs into Slick Rock and the other into Cheoee river.

Q. 35. And the other comes opposite the spruce pine or hemlock?

A. Yes comes right down there.

Cross-examination.

By Mr. SONDLEY:

Q. 36. You are not a surveyor?

A. No never.

Q. 37. You just helped?

A. Yes, just helped.

Q. 38. Burns was trying to find the State line?

A. Trying to find the State line.

Q. 39. Did you see any effort on his part not to find anything correct?

A. He seemed to do all he could.

1406 Q. 40. To find the true line?

A. Yes sir.

Q. 41. You say when you got down toward the river the ridge divided?

A. Yes sir.

Q. 42. At one period you actually took the northern line?

A. We looked at both ridges while there.

Q. 43. Calling attention to the northern one how near did you go to the river?

A. To the river.

Q. 44. The left hand one you went down also?

A. Yes sir.

Q. 45. Where did it end?

A. At the river.

Q. 46. At the spruce pine?

A. On this side.

Q. 47. On the north side?

A. On the Swain side.

Q. 48. That was nearly opposite where Hang Over seemed to make up?

A. The Hang Over divides and a little middle ridge comes down.

Q. 49. Going back to the north side of the river you say there is a spur between the right hand and southern, or left hand?

A. No spur, just a bluff there.

Q. 50. I understood something you said about a fork that ran in opposite the mouth of Cheoee river?

A. From where?

Q. 51. From the Welch turn pike there was no fork that ran in at the mouth of Cheoee river?

A. Just a little, there is only two main ridges one goes in the

mouth of Slick Rock and the other a half or three quarters of a mile above it.

Q. 52. And the one above is where you found the marks?

A. Yes sir.

Q. 53. And ran in at the spruce pine?

A. Yes sir.

1407 Q. 54. And that was marked?

A. Yes that was the State line mark they say.

Q. 55. And the one opposite this is the one where Hang Over forks and one fork goes toward Lick Rock and the other down opposite where you were?

A. A little small ridge; it forks pretty close to the river.

Q. 56. It is very steep from the river bank up?

A. Yes very rough, a little ridge.

Q. 57. Now starting from the Welch turn pike you could see Big Fodder Stack?

A. Yes sir.

Q. 58. Very prominent?

A. Yes, shows from all parts of the country nearly.

Q. 59. What direction is that line from Welch turn pike as near as you can tell as you followed it.

A. Going in southwest direction.

Q. 60. What direction was Fodder Stack from the Welch turn pike?

A. More west.

Q. 61. But fully in view in front?

A. Yes Fodder Stack in view.

Q. 62. Which Fodder Stack do you mean, big or little?

A. The little one is more west than the big one; the big one is a little further south.

Re-examination:

Q. 63. I don't know if I understand exactly what you mean by that ridge which leads down from the main ridge on north side of the river, and which you say Burns followed on three or four different days, as I understood it; when you come down toward the river from the turn pike you reach a point some distance north of the river where ridges run off from the main ridge, one to the left that goes to the Tennessee River just below the mouth of Cheoee?

A. That is right.

Q. 64. Then one to the right which goes down to the river about opposite the mouth of Slick Rock?

1408 A. That is right.

Q. 65. Between these two is a middle or third ridge which reaches the river at a point where you found this marked spruce pine and opposite the butt or bluff of the Hang Over lead?

A. On this side there were two ridges, one goes into the mouth of Slick Rock and there is a little spur between we don't count, but the left hand ridge opposite Hang Over is where we found the hacks, so there are two ridges there and spurs between them but they gave out before they got to the river.

Q. 66. The spurs did?

A. Yes sir.

Q. 67. The right hand one leading to Slick Rock and the left hand one to Cheoee ran to the river?

A. Yes sir.

Q. 68. On the right hand ridge to Slick Rock you found no marked trees?

A. No sir.

Q. 69. On the left hand ridge just below the mouth of Cheoee river you found hacks?

A. Yes sir.

Q. 70. You blocked the trees?

A. Yes sir.

Q. 71. How big were they?

A. Eighty six growths in them.

Q. 72. On that lesser ridge between the right and left it ran to the river where you found the marked pine?

A. No, the left hand ridge ran to the river and there is where we found the marked pine.

Q. 73. That marked pine where you say Burns blocked it and it showed annular rings to the extent of 86, where was that?

A. Right at the river where the left hand ridge gave out.

Q. 74. How far below the mouth of Cheoee river?

A. I don't know, right smart piece, I could hardly tell how far. Cheoee and Slick Rock is about I believe a mile and a half
1409 apart, and it is about a half or three quarters up to this blocked pine from the mouth of Slick Rock; I measured it but disremember what it was. I know I thought it was three quarters but the other boys thought it was not quite so far to where we blocked the hemlock.

Q. 75. That was on the ridge that led down to opposite the Hang Over lead?

A. Yes sir.

Q. 76. You say you are familiar with that country through which Cheoee river runs?

A. Yes I live on Cheoee river.

Q. 77. In Graham County?

A. Yes sir.

Q. 78. Now are you familiar with the waters that run into the Little Tennessee river on its north side just east, some little distance east, of the state line?

A. It is southeast you might say.

Q. 79. What creek runs into the Little Tennessee river southeast of where the state line crosses it from the north side?

A. From the north side to where we went to the river there is no creek.

Q. 80. What is the first creek of any note above that runs into the river from the north side?

A. Nothing only Cheoee river above where we went in,—on the south we should say, from the north side.

MAPS

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Q. 81. Isn't there a creek called Twenty Mile Creek runs into the Little Tennessee river?

A. That is four miles above there.

Q. 82. I show you here certified copy of what is known as the Commissioner's map of 1821 and I point out to you the place where the state line is marked on that map as crossing the Little Tennessee river; just east of that line on the south side of what purports to be a stream and is marked 'creek." I will ask you to examine that and state whether the general direction of that stream so laid down on that map and marked "creek" conforms to the general direction of the Cheoee river?

A. Yes on that part right here (indicating) it has the very curve of the river.

1410 Q. 83. You say this part here,—do you mean that part covering a little more than a half inch away from where it joins the Little Tennessee river?

A. Yes this upper line; it is as good as a man could make it.

Q. 84. From that point or bend extending southeasterly does it conform to the general course of the Cheoee river?

A. Runs pretty much the same course. There are a few creeks that are not there,—there is Robbinsville, Telula and Snow Bird.

Q. 85. From your knowledge of that territory and stream Cheoee river, what would you say this stream marked "cre-k" is?

A. I would call it Cheoee river,—compelled to.

Q. 86. That is your best judgment of it from your knowledge of that location?

A. Yes because Slick Rock Creek and that other creek would not run that way.

Q. 87. What other creeks would not run that way?

A. Some other creeks that are there. That is bound to be Cheoee river because I have lived there years and have been all over there and have been fishing there. It makes a curve back to the south and turns more east at Robbinsville it prongs. There are a few creeks there that are not marked.

Q. 88. From Robbinsville for a mile and a half from the point where it flowed into the river up the creek,——

A. (Interrupting.) Not as far, may be three quarters where it makes a curve back east; it turns to the right and then back east.

Q. 89. Please file this certified copy of map as Exhibit "A" to your deposition?

A. I do so.

(Here follows map marked Exhibit "A" to Deposition of Onley Williams.)

Recross-examination:

Q. 90. You say I believe from the mouth of Slick Rock to the mouth of Cheoee river is a mile and a half?

A. About.

1411 Q. 91. And this spruce pine on the north side and between a half and three quarters of a mile above on Slick Rock is on the opposite side and that would make it from a mile to a mile and a quarter below the mouth of Cheoee river?

A. If I ain't mistaken it is a mile and a half, may be not quite that far to Slick Rock.

Q. 92. How far from the Cheoee down to the spruce pine?

A. I don't know; we looked into the mouth of the Cheoee.

Q. 93. It is three quarters of a mile?

A. I guess it is.

Q. 94. The Tennessee river runs practically east and west there?

A. About.

Q. 95. With bends?

A. Yes sir.

Q. 96. Slick Rock comes in at a right angle?

A. Slick Rock comes in nearly due north.

Q. 97. Something east of north isn't it?

A. No, where it runs in you may sound the river there and at the mouth of Slick Rock it is nearly due north.

Q. 98. The Cheoee and Tennessee rivers come in at an acute angle?

A. Near that and Cheoee curves back there.

Q. 99. When you speak of these forks of the creek on this map and say it looks like Cheoee river forks you don't mean to say they are correct?

A. They look nazural.

Q. 100. You don't say that the distance above the river to some of those little streams is the same distance it really is do you?

A. Which?

Q. 101. You don't undertake to say that this map when it shows little streams putting into what is marked "creek" marks a creek that is just the right distance for some stream putting into Cheoee river?

A. No not the upper part, but this line (indicating) is as near like Cheoee river as a man could make the line.

Q. 102. Doesn't the Tennessee and Cheoee rivers come in

1412 there at right angles, don't you observe that it is at right angles there? That goes out that way, the river goes that way (indicating) but right where they come together it is right angles isn't it?

A. Cheoee comes in on an angle to the Tennessee river just about like that map there but it curves back nearly due south for a half mile and turns more southeast.

Q. 103. And comes in at an acute angle?

A. Yes sir.

Q. 104. This is a right angle there?

A. It looks right to me.

Q. 105. That would not correspond then there where they run together would it? Because one is a right angle and the other an acute angle?

A. It just looks like it as near as I can tell.

Q. 106. I simply want to know if that is not a right angle, and if that is not the way the river runs?

A. The Tennessee, yes.

Q. 107. It is due east and west?

A. Yes sir.

Q. 108. When you start out the little creek starts out nearly due south?

A. Yes sir.

Q. 109. That makes a right angle?

A. Yes.

Q. 110. That is not the acute angle you speak of where they come together?

A. It runs a little east when it starts out, not quite south. I never set a compass on it but it runs a little east for a half mile and turns again.

Q. 111. You never actually set a compass on the Cheoee river at its mouth or on the Tennessee river?

A. Nary one, no.

Q. 112. So that your estimate is just placed upon the idea that they are close together and you think they really come together at an acute angle?

A. As near that as can be; that is a very good map.

1113 Q. 113. That is a right angle there?

A. Whatever that is it is as good a map as a man could make it.

Q. 114. Couldn't tell us whether it is an acute angle?

A. I don't know as I understand.

Q. 115. An acute angle is less than a right angle?

A. It comes in near due south. I will file affidavit on that; we don't know whether the Tennessee river is due west or not, but the Cheoee is due south.

Q. 116. That is your recollection of the Cheoee river entrance, that it resembles that?

A. Yes sir.

Q. 117. You will not say it comes in at an acute angle?

A. It comes in like that (indicating on map).

Q. 118. Did you ever see a map of that made by actual survey?

A. Yes sir.

Q. 119. Did it look like that?

A. Yes favors it a right smart.

Q. 120. Did you ever see Burns' map?

A. Yes sir.

Q. 121. You think it looks like that?

A. I never noticed Burns' Cheoee river.

Q. 122. He surveyed the streams?

A. Not when I was with him. He is surveying them now.

Q. 123. The map he had represented it truly?

A. I never noticed Burns' I noticed our County Surveyor, on his map, and they looked a good deal like that. He has the map of Tennessee, I could have got them any day.

Q. 124. Are you not judging rather by the general trend than the actual location?

A. Oh no. I am well acquainted with that country, I was raised there and know nearly every crook of that river.

Q. 125. What course does the line take where it crosses the Tennessee river there on that map as you estimate it?

1414 A. I don't know the directions altogether.

Q. 126. You could not tell?

A. It runs on a south direction there.

Q. 127. I mean on this map as you understand it what direction does the line cross the river on?

A. I disremember the direction we come down; I don't know as we set on the other side.

Q. 128. What does the map say? What course does the map show?

A. On this side kind of southwest, on the north side I mean; on the other side it runs a good deal south mostly; those ridges make curves every now and then and we would have to keep with them and could not tell every direction we went.

Q. 129. I wish you would look at this map and get the course that the stream comes in there into the Cheoee river now whatever it is, it is in a northeast direction, isn't it nearly north but a little northeast as shown by the map? Here is north now (indicating) get the map, this is north this way (indicating), parallel to this point here. Now then this will be north, that will be at right angles east and west, and that thing is running in there isn't it in a northeast direction,—going north and east?

A. Some of it does.

Q. 130. Right at the entrance isn't it?

A. Yes sir.

Q. 131 Isn't it a fact the Cheoee enters the Tennessee river at a northwest course and not northeast?

A. It comes in at the mouth for about a half a mile, nearly due south and then back to the right, it runs due south.

Q. 132. Doesn't it enter at a northwest direction?

A. It would have to come back and go near due north coming to the river; after it gets up three quarters of a mile it turns southeast and makes a long bend there, southeast, it comes in south to the best of my belief; I have looked at it many a time.

1415 Re-examination:

Q. 133. Now without reference to what counsel calls an acute angle or a right angle, Mr. Williams I will ask you if in your judgment this map shows just about the course in which Cheoee river runs into the Little Tennessee?

A. It shows the course as near as I can get at it to save my life or look at it.

And further saith not.

ONLEY WILLIAMS.

Subscribed and sworn to before me this the 28th day of November 1910.

S. E. CLEAGE

One day and 486 miles.

Adjournment to 9:30 tomorrow morning.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

1416 WILLIAM R. CARRINGER, next witness, duly sworn, deposed and said:

Examined by Gen. CATES:

Q. 1. State your name, age and place of residence?
A. 57 years old the first day of last March.
Q. 2. Where do you live?
A. In Blount County up near Kizer on the L. & N. Railroad, a mile and a quarter from the railroad.
Q. 3. How long have you lived in Blount County?
A. About four years now.
Q. 4. Where did you live before you moved to Kizer station?
A. In Monroe County.
Q. 5. At what place?
A. They call it Mill Sap settlement, near Boyd McMurray's, in four or five miles of there.
Q. 6. Near Citico Creek?
A. Yes sir.
Q. 7. And Tellassee?
A. They call it Telassee just across the ridge.
Q. 8. How long have you lived there?
A. About 30 years.
Q. 9. Where did you come from?
A. North Carolina.
Q. 10. From what county there?
A. Graham. I was born in Graham County, we lived there in time of the war, I was a little fellow.
Q. 11. What was the name of your father?
A. John Carringer.
Q. 12. Where does he live now?
A. Graham County, N. C.
Q. 13. How old is he?
A. Somewhere near 80.

1417 By Mr. MCCROSKEY:

Q. 14. Have you ever heard your father or other old citizens say where the State line is located?
A. Yes sir.
Q. 15. Please tell who told you and what they said?

Mr. SONDLEY: The State of North Carolina objects to declarations of living persons as incompetent as locating the State line; and fur-

ther objects that the question does not lay sufficient foundation for the testimony sought to be elicited thereby, and no such foundation having been laid.

A. My father,—all I know about the line is my father when I was young,—I don't know what age but about grown I reckon,—my father and I were traveling through and in the Slick Rock gap, he just stopped and said to me,—that is this ridge we are speaking about that runs to the Hang Over, they call it, he said "right here is the line, always said to be the line," that is in Slick Rock gap between North Carolina and Tennessee, the Tennessee and North Carolina line.

Q. 16. Did you ever hear any other person say about where the State line was located and if so who?

A. I don't recollect. I have heard it all my life off and on but I don't recollect who I heard speak of it. It seems that ever since I recollect that the Slick Rock gap line was spoke of and up by Hang Over, but I don't recollect. My recollection is I heard it spoken of many times, but I don't know who it was. I cannot think of anybody who spoke of it except my father, he showed me, we were just traveling over and he told me "here is the line between North Carolina and Tennessee."

Mr. SONDLEY: The State of North Carolina objects to the foregoing testimony as incompetent and too general to be admissible, even if it were otherwise.

Q. 17. Do you remember about how old you were when you first understood it to be the State line?

A. No, I don't remember.

Q. 18. Were you grown?

1418 A. I think just about a man, as well as I recollect, I think I was about that, it has been a good while ago.

Q. 19. How often have you passed through there?

A. Many, many times and have hunted all over those hills, I used to when young.

Q. 20. You cannot remember distinctly any particular parties who told you where the line was being located at that point?

A. No, I cannot recollect. I have heard men speak of it, but I don't recollect who.

Q. 21. You do remember that was the general understanding?

A. Yes, always was ever since I heard of it.

Mr. SONDLEY: The State of North Carolina renews the same objection as above.

Cross-examination.

By Mr. SONDLEY:

Q. 22. When did you first hear that was not the State line?

A. Well I don't know that either. As well as I recollect it was not far from the time they commenced getting timber in there, they said for Belding, the understanding was he commenced cutting tim-

ber there is the first I recollect, I ain't sure, I know I saw the logs he cut and they said they had got into a lawsuit over the line.

Q. 23. Can you give the approximate date of that?

A. No, I lived in this country then, in Monroe County at that time, and I don't know how long back it has been, but several years.

And further saith not.

WM. R. CARRINGER.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

Sworn to and subscribed before me this the 28th day of November, 1910.

S. E. CLEAGE.

One day and 48 miles.

1119 NOVEMBER 29, 1910—9:30 a. m.

The further taking of these depositions was resumed pursuant to adjournment at 9:30 A. M., November 29, 1910.

H. H. MILLER, next witness, being duly sworn, deposed and said:

Examined by Gen. CATES:

Q. 1. Your name is Houston Miller?

A. Henry Houston.—H. H. Miller I sign it.

Q. 2. How old are you?

A. 62 the 26th of this November.

Q. 3. Where do you live?

A. I live in Monroe County, the 19th District, at the edge of Tellico Plains, the edge of that ridge; I have lived there 22 years.

Q. 4. Have you always lived in Monroe County?

A. I have lived in Monroe County ever since I was born except two years in '63 we moved to Illinois and remained there for two years, until peace came, then moved back at our old home, but not exactly where we had made our home all the time.

Q. 5. Before you moved to Tellico Plains did you live out there in that section of Monroe County near the North Carolina state line?

A. I lived in about 3 or 4 miles of the state line for about 20 years.

Q. 6. Whereabouts?

A. I lived near the river, about a mile from the river in the same district, near the waters of Tellico river right below the south prong.

Q. 7. Is that around about Coker Creek?

A. It is six or seven miles to Coker Creek but in the border of Tellico Mountains, that is where it is occupied; at that time only hunters were there.

Q. 8. Did you know — very old man named Joseph Graves commonly called in that country Uncle Joe Graves?

A. Yes sir.

Q. 9. What relation if any was he to you?

1420 A. My own uncle.

Q. 10. Did you ever live with him?

A. Yes the first man I recollect seeing was him. My father died and Uncle Joe Graves raised me.

Q. 11. Do you know where what has become to be known in Monroe County as the State ridge is?

A. Yes, when I was a boy Uncle Joe Graves told me.

Q. 12. Have you ever been across that ridge?

A. I have been on the ridge up near to the Laurel Top but never right where it joined the river, never crossed there. But I have hunted a great deal on those mountains.

Q. 13. Have you been in that territory east of the State ridge and next to the main ridge of the mountain there the Mitchell Bald?

A. I have just been passing through mostly hunting. I was south of the State ridge and camped with the Wetmore Company and with Gen. Jarvis and Col. Seymour the year Jarvis went out and Seymour came in about 1870 or 1872 we camped there one week at the Tipton place above the State ridge.

Q. 14. Did you ever have a talk with your uncle Joe Graves about how a line came to be surveyed along that ridge when the State Commissioners were running a line in 1821?

A. Yes sir.

Q. 15. State whether or not your uncle ever told you and what you heard him tell any one that was along with the surveyors, if he told you?

A. Yes often times he told me, he said he was with the surveyors and I don't know whether he walked or went horseback, but he was a packer and was 16 or 18 years old at that time, he was along when they got lost.

Q. 16. What did he tell you about the line?

A. He said they had orders for them to keep the divide between what is now the waters of Tellico and the other that runs into North Carolina, that is the dividing ground, the lead.

Q. 17. The main lead?

A. Yes sir. And he said when they come to this ridge which is now called the State ridge,—or was about ten years ago the first I knew was when Hizer was sawing there and they got inter-

1421 ested in the line. He said they came there and there was a dense fog came down and he said the State ridge at that place seemed to be a little higher than the main lead until they got to the gap, and it took a rise again and he said the fog being there they made a mistake and took down what is now called the State ridge and marked the line until they come to the break off and saw they were lost.

Q. 18. What do you mean by the break off?

A. By the river.

Q. 19. The Tellico River?

A. Yes, one prong, they call it a river, it is a creek.

Q. 20. They discovered their mistake?

A. They discovered the fog and they were lost and they went to

where there was water and camped and the next morning they sent him and another man back to cut out these hacks and they went back a piece and cut a piece and said they thought it was foolishness and a little too much work and sat down and they went back and they all got on a high peak and made a plat of the dividing ground and after that they just surveyed on the main lead but never went back and surveyed around the head waters of Tellico in that bend.

Q. 21. This bend in the east?

A. Yes sir.

Q. 22. You say he told you when they got to Laurel Top they were in a fog and went on that ridge which came to be called the State ridge?

A. Yes, that is the reason they call it the State ridge. I asked him why they called it the State ridge, they called it that in hunting, and I knew they called the main State line around the top, and he explained to me.

Q. 23. Is Joseph Graves dead?

A. Yes sir.

Q. 24. How long has he been dead?

A. From 18 to 20 years. The best I recollect. I have not the date down.

Q. 25. So when they got down under the fog at a point on
1422 the State ridge near the river and discovered that they were not on the main divide of the waters, the Commissioners sent Graves back to cut out the hacks that had been made in the trees?

A. He sent him and another man back to cut out the hacks.

Q. 26. Did he tell you the name of the other man?

A. If he did I forgot it.

Q. 27. They made a plat around the higher ridge to the east which was the divide of the waters?

A. Yes, after they saw how it ran they just made a plat of it and went on.

Q. 28. You have referred to being with a party with Seymour and Gen. Jarvis. Was there a man by the name of Whittaker along?

A. Yes, Col. Whittaker.

Mr. SONDLEY: The State of North Carolina objects to the testimony about Graves as being hearsay and incompetent.

Q. 29. That was in 1870 or 1871?

A. Yes, about '70 or '71, not later than '72.

Q. 30. Was a man named Isaac Tate along with you?

A. Yes, Isaac Tate and Marion and Tip Tate his sons. They left me and old man Isaac Tate at camp to cook.

Q. 31. How old was Isaac Tate?

A. At that time vastly old, 70 or more, he was very old and I was a boy about 21 or 22 and they left us to cook.

Q. 32. Do you recollect whether he said anything to you about going with the commissioners and surveying when that 1821 line was run.

A. He was telling me how it come to be called the State ridge,

about the same tale as Uncle Joe told I think. He said they went along,—but I will not be positive that he was along, but the way he talked I understood he was. I don't know whether I asked him if he was along, I took it for granted he was and he told me the same as Uncle Joe did.

Mr. SONDLEY: The State of North Carolina objects to the testimony in regard to Tate because hearsay and incompetent.

1423 Q. 33. State whether or not the general understanding among people living in that part of Monroe County, the tradition is that a line was marked along that ridge which came to be called the State ridge, in the manner that Graves and Tate told you about?

A. It was only counted the State ridge, it seemed to be the understanding with them all that it was a mistake and was called the State ridge but that it was not the State line,—only the State ridge.

Mr. SONDLEY: The State of North Carolina objects to this testimony on the same ground.

Q. 34. And that the State line was east of the State ridge, around the main divide which was the divide of the waters——

A. Yes.

Q. 35. —running down into North Carolina and to Tellico river?

A. Yes that was how Wetmores and Stephens came to run their line, to find if their land lay above the State ridge.

Q. 36. You say above the State ridge, do you mean around the head waters of Tellico?

A. It is inside the boundary of the waters but east of the State ridge between that and the main dividing ground of the waters, the main lead. They ran there quite a time, we camped there. My brother was flagman and we did the cooking.

Q. 37. You and Isaac Tate?

A. Yes, he had been a hunter and they found we could cook and left us to cook. There were about 8 or 10 in the crowd.

Mr. SONDLEY: The State of North Carolina objects to this testimony on the ground that it is hearsay and incompetent that the examination is very leading.

Cross-examination.

By Mr. POSEY:

Q. 38. You say Joseph Graves was your uncle?

A. Yes, my mother's brother.

Q. 39. Did he tell you that Laurel Top was on the State line?

1424 A. Well he told me that just before they got to where Laurel Top is, where the State ridge come off is where they got in the fog and made the mistake.

Q. 40. Did he say Laurel Top was on the State line?

A. I didn't ask him about Laurel Top, he said they were to keep the dividing ground.

Q. 41. Is Laurel Top on the State line?

A. I suppose it would be, I never went around there on the line, I just hunted through, it was not my business to go there. We camped under the top of the ridge.

Q. 42. There is no tradition about whether Laurel Top is on the State line?

A. I cannot tell, but I have been on the Laurel Top and the last time I was there my brother killed bear. I never hunted for lines; wherever we found a deer or bear we tried to kill it.

Q. 43. He said when they got to the river they found they made a mistake?

A. Near to the river.

Q. 44. The fog being on?

A. The fog rose.

Q. 45. This ridge from Laurel Top led them down there?

A. Yes it seemed to be the highest ground where it turned off.

Q. 46. A leading ridge?

A. They took down a leading ridge.

Q. 47. Did he tell you how they came to go west of the river and mark some trees?

A. He didn't tell about them marking any west of the river. He said they went near the top of the mountain and struck the line again and made a plat of it.

Q. 48. They didn't survey the other, just made a plat of it?

A. No, they didn't measure he said.

Q. 49. Did he tell you how they came to come out at the 101 miles at the Unaka road?

A. No he did not say.

Q. 50. He didn't tell you that?

1425 A. No, I don't know as he knew, he was just a pack boy and I don't know that they would counsel him about that.

Q. 51. They didn't cut out the marks?

A. He said they cut out a few and decided it was too much labor and didn't think it amounted to anything and went back.

Q. 52. Have you ever been around that top?

A. No, I have been in the bend but not around the top.

Q. 53. You don't know the distance around the Unaka road?

A. No, it makes a bend like my arm that way (indicating).

Q. 54. It would be six or seven miles further around that way than the other line to the Unaka road?

A. I don't know, but it is some distance further, it would be reasonable to show it further that way than across.

Q. 55. He didn't tell you how they came to make actual measurement to the turnpike road and he didn't tell you how they came to mark it 101 miles?

A. No, I don't know that he knew about that, he tended to the horses.

Q. 56. Was Joseph Graves a brother of William Graves?

A. Billy Graves of North Carolina, yes I believe Joseph was the oldest boy, there were ten children of them four boys and six girls

Q. 57. You lived in Tennessee all the time?

A. Except two years.

Q. 58. You have not lived on the North Carolina side?

A. No, well I stayed there six or eight months in time of the war with a cousin of mine. She [illegible] I was there six months with her.

Q. 59. The balance of the time during the war you were in Illinois?

A. The balance of the time in Tennessee except two years in Illinois.

Q. 60. How old were you when you say Joseph Graves told you about that?

A. When he first told me?

Q. 61. Yes.

A. I don't recollect, he told me several times in our hunts together and at home.

1426 Q. 62. He told you the same thing?

A. Yes, all the time about the same tale and Tate told about the same tale only I cannot say that Tate said he was along. But he left that impression, he told it so near like the old man.

Q. 63. You have been on the State ridge?

A. I have crossed it but never plumb to the river.

Q. 64. As it runs from Laurel Top is goes in a southwest direction, a leading ridge toward Tellico river?

A. I don't know the direction but it winds some, some crooks in it but I cannot say it did not run in that direction.

Q. 65. He said they came to follow it because it was a main and leading ridge?

A. He said they thought it was dividing ground of the waters of Tellico and of North Carolina, those that went into North Carolina.

Q. 66. Did he say they made a plat calling for the divide of the waters?

A. That is what he told me.

Q. 67. What did he say they did with that plat?

A. I never asked him, I didn't think anything of it and whatever he told me I thought there would be nothing more of it.

Q. 68. Who did he say ran the line?

A. I never asked him.

Q. 69. What did he say they were running it for?

A. To know where the line was between the State of Tennessee and North Carolina.

Q. 70. He didn't tell you what they did with the plat they made?

A. I never asked him, I wasn't interested enough.

Q. 71. What did they do with their surveys, who did they report to?

A. He would not have known, he was only a pack boy or servant as I was with the Wetmores.

Q. 72. Who did he say made the plat?

A. I didn't ask him.

Q. 73. Then you didn't know?

A. No I would not have known.

1427 Q. 74. When did he say it was done?

A. I never asked him the year, he was just a boy 16 or 18 years old.

Q. 75. Then you don't know who was along, the year it was made or anything about?

A. Of course I don't. I didn't ask him, he didn't think it necessary to tell me for he knew I knew nothing about. I just asked him how it come to be called the State ridge.

Q. 76. That has been the State ridge ever since you knew it?

A. They called it the State ridge, not the State line the State ridge and that is the reason I asked him and he told me what caused it to be called the State ridge, through a mistake.

Q. 77. Could man Joseph Graves read and write?

A. He could read. I don't know about his writing. I don't recollect anything about that, he could read, that I know.

Q. 78. Where did they make that plat? Was it the same day or the next day when they turned back?

A. The next day, on the ridge.

Q. 79. He said they just platted around?

A. They did not go on the ridge he said where they got lost, but the other way.

Q. 80. They just platted and didn't make a survey?

A. He said that they platted it.

Q. 81. That they did that the next day?

A. The next day after looking over the ground and saw where they made the mistake, where they got lost.

Q. 82. He said they just platted it?

A. Yes sir.

Re-examination:

Q. 83. You say he was a younger brother of your Uncle Joseph Graves,—that William Graves or Bill Graves was?

A. I will not be right certain but I think Uncle Joe was the oldest one of the boys.

Q. 84. Where did Bill Graves live?

1428 A. In North Carolina on Hanging Dog.

Q. 85. How far away is that from this territory?

A. It is a good piece to Hanging Dog, 30 miles or more.

Q. 86. Did Bill Graves ever live in Monroe County?

A. Never that I ever heard of and I have lived in Monroe County all my life. I have been to his house several times where he lived.

Q. 87. He never lived in Monroe County?

A. Not that I know of.

Q. 88. Joseph Graves did live in Monroe County?

A. Yes, except the two years with me out there.

Q. 89. Out where?

A. In Illinois.

Q. 90. You and your Uncle Joe went together?

A. Yes, he took me, we all went together, my mother and all.

Recross-examination:

Q. 91. You say it is 30 miles from there?
A. About 20 or 30 to Hanging Dog.
Q. 92. Don't you know it is not that much from Coker Creek?
A. No, I have been there.
Q. 93. Don't you know it is only six miles from Hanging Dog over Beaver Dam to this State ridge?
A. I didn't count that State ridge in the boundary where I lived.
Q. 94. He asked you where Billy Graves lived from this State ridge?
A. I thought he meant from where I lived, that makes a difference.
Q. 95. Bill Graves hunted in there?
A. Oh yes about the head of the river and his son John does today. It is 30 miles from where I live to his house.
Q. 96. I thought you didn't understand?
A. I didn't understand the question.

Re-examination:

Q. 97. Where is Hanging Dog?
A. Runs into the Hiawassee River below Murphy.
1429 Q. 98. About how far is it from the State line around the main divide of the waters?
A. To Hanging Dog?
Q. 99. Yes.
A. I couldn't tell you, I guess it is more than half way ground between where I lived than where he lived. That is my opinion.
Q. 100. How much younger was Bill Graves than his brother Joseph?
A. I couldn't tell.
Q. 101. He was a younger man?
A. My opinion is that Joseph was the oldest. I was talking with a cousin of mine, Granville Graves, and he is 88 years old now, and we were talking about which was the oldest and he said he thought Uncle Joe was. This one is a son Sol Graves and he comes to see me often, was up last week.
Q. 102. You were asked on cross-examination about the year when your Uncle Joe Graves said that line was run and you answered that he didn't tell you?
A. He never told me.
Q. 103. But he said they were running the lines between the States of North Carolina and Tennessee?
A. Yes, to locate the line between North Carolina and Tennessee.

Mr. SONDLEY: The State of North Carolina objects to the above question as leading.

And further saith not.

H. H. MILLER.

Sworn to and subscribed before me this November 29th, 1910.

S. E. CLEAGE.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

Two days and 120 miles.

1430 A. C. WILLIAMS, next witness first duly sworn, deposed and said:

Examination by Gen. CATES:

Q. 1. Your name is A. C. Williams?
A. Yes sir.
Q. 2. How old are you?
A. 54 years old.
Q. 3. What is your occupation?
A. Farmer.
Q. 4. Where do you live?
A. I live now in the lower end of Swain County N. C.
Q. 5. How long have you lived there?
A. Where I live now seven years, but right in the lower end of Graham County I have been living 16 years.
Q. 6. Where were you born?
A. In Graham County N. C.
Q. 7. Have you live- there and in Swain County N. C. all your life?
A. Yes except two years.
Q. 8. Did you know a surveyor by the name of Lovingood?
A. Yes sir.
Q. 9. What is his given name?
A. Francis.
Q. 10. Do you know a man by the name of Thomas?
A. Yes, Jim Thomas, I was agent for him a while.
Q. 11. Is that James R. Thomas?
A. Yes, I was what you might call his agent he got me to see after his land for him.
Q. 12. Is he one of the heirs or related to Wm. H. Thomas?
A. Yes sir.
Q. 13. Is he a son of Wm. H. Thomas?
A. Yes, that is what he says.
Q. 14. I will ask you whether or not you know of Francis Lovingood being employed to survey some land for James R. Thomas?

1431 A. Yes, he run all the land out he had in the lower end of those counties.

Q. 15. How long ago?
A. Between 9 and ten years ago I think.
Q. 16. Were you with him?
A. Yes sir.
Q. 17. In what capacity did you accompany Francis Lovingood on that survey?
A. I was hacker, hacked the timber you know.
Q. 18. Where did you go to begin that survey?
A. The one on the south side of the river?

Q. 19. Yes.

A. At the mouth of Slick Rock Creek.

Q. 20. Did you commence above or below the mouth of the junction between Slick Rock Creek and Little Tennessee river?

A. Above the mouth on the east side.

Q. 21. Now I read to you from what purports to be a copy of North Carolina Grant No. 8234 signed by A. M. Scales, Governor of North Carolina to Wm. H. Thomas as grantee found in the record of proof furnished by the stenographer taken for North Carolina to the State of Tennessee at page four the following call: "Beginning on a small spruce pine on the state line at the mouth of Slick Rock Creek and about one pole northeast of the corner of No. 611 and runs with the state line south 25 east 221 poles to a corner of said number" and I also read to you from what purports to be a copy of a deed from James R. Thomas et al. to J. S. Bailey as follows: "Beginning — a black gum on which are old marks indicating a fallen spruce as a corner on the south bank of the Tennessee River at the mouth of Slick Rock Creek and in the State line and about one pole northeast of the corner of No. 611 and runs with the state line south 25 east 293 poles to a dogwood on which are old pointer marks indicating a fallen chestnut as a corner and supposed to be a corner of No. 611." Now I will ask you Mr. Williams whether when Lovingood went to survey out that land he had a copy of either of these papers from which I have read?

A. Yes, the way I understood the big tract of land was No. 920 but that is the same thing I see.

1432 Q. 22. You mean to say the call?

A. Yes, the same call.

Q. 23. Now where did you and Lovingood go to begin that survey?

A. To the mouth of Slick Rock Creek.

Q. 24. Above the mouth?

A. Above the mouth of the creek.

Q. 25. In between the river and creek?

A. Yes sir.

Q. 26. Did you find a small spruce pine there?

A. Yes we found a stump and a witness.

Q. 27. What was the witness on?

A. I believe a black gum, I will not say for sure but I think the black gum.

Q. 28. Now running that call from that pine stump, "with the state line south 25 east 293 poles" as stated in what purports to be the copy of the deed, in what course did you go and up what ridge?

A. It turned when it started from the mouth of the creek, it started over the Hang Over divide leaving Slick Rock on the right hand side bearing from the creek all the way.

Q. 29. Is there a prong or branch of the Hang Over lead or ridge which runs down from the main ridge on to the junction point between Slick Rock and Tennessee River?

A. Yes where that corner tree was.

Q. 30. Is that the lead or ridge you ran up the Hang Over?

A. Yes, when it started it lacked a little grain of being on top of the ridge, but in a few minutes it got on top.

Q. 31. How far did the 293 poles called for in this Thomas Deed carry you. I mean did it carry you beyond the top of Hang Over?

A. Yes some distance.

Q. 32. How much?

A. I couldn't tell but not very much; it went across a piece where it cornered. I could not tell I didn't pay attention. I wasn't thinking of any hereafter over it.

1433 Q. 33. You said 293 poles would carry you beyond the top of Hang Over ridge?

A. Yes sir.

Q. 34. Or the junction point of this lead that runs down to the mouth of Slick Rock with the main ridge, it would carry you somewhat east of that?

A. Yes sir.

Q. 35. That is 293 poles. Now I will ask you if 221 poles would not carry you to just about the top of Hang Over?

Mr. SONDLEY: The State of North Carolina objects to this question as leading.

Q. 36. State about how far 221 poles from the beginning point would have carried you?

A. Something near half a mile to the top of that ridge. I had never thought about it.

Q. 37. You didn't state whether you charged your mind particularly at that time?

A. No I did not.

Q. 38. Where is Francis Lovingood?

A. I don't know.

Q. 39. Is he living?

A. I suppose so.

Q. 40. State whether or not on that survey beginning as you have described Lovingood ran around considerable body of land?

A. Yes, he ran around a sight of land, every piece of the Thomas land in that lower end of the county.

Q. 41. State whether or not when you came across the top of Hang Over ridge you were then unquestionably in Graham County?

A. Yes sir.

Q. 42. I will ask you to state without going into detail whether or not in running that survey you crossed Cheoee river?

A. Yes sir.

Q. 43. And then go north of the little Tennessee river?

A. Yes, that was on the Swain side.

Q. 44. Did you pass into Swain County?

1434 A. Yes, up on that tract. But not in this piece.

Q 45. Not in No. 920 but upon the boundary you were surveying out at that time?

A. Yes sir.

Q. 46. Do you know where the state line north of the Tennessee river is?

A. Yes sir.

Q. 47. Have you been to it?

A. Yes in running out these lands and people would come and want me to show them and I have showed all of these corner trees in the state line and all.

Q. 48. What surveyor were you with on the north side of the river?

A. H. E. Stout, the railway right of way man and he had a man with him and they ran that state line and I was with him and helped do it, I forget his name.

Q. 49. Do you know where the 61st mile tree is on the line between North Carolina and Tennessee?

A. Yes sir.

Q. 50. I read to you again from what purports to be copy of the calls in the deed from James R. Thomas et al. to J. S. Bailey, after the boundary had crossed from Graham County over into Swain County, and then omitting a number of calls, this: "thence west 320 poles to a locust and black oak, the 61st mile tree in the state line, the northeast corner of No. 6684."

A. Yes I know where it was.

Q. 51. You have been there?

A. Yes I started from there.

Q. 52. From the black oak?

A. Yes, the locust is down, the black oak is standing.

Q. 53. Has it got marks on it?

A. Yes, hacks.

Q. 54. What kind of hacks?

A. Two hacks.

Q. 55. And a blaze?

A. Yes sir, I think it is a witness to the locust sorter.

1435 Q. 56. I read again, "thence with the state line and the line of No. 6684 south 35 west 140 poles to the public road?"

A. That is right.

Q. 57. What road is that?

A. The turnpike from North Carolina to Tennessee.

Q. 58. I read again from the copy of the calls in that deed: "thence 50 degrees west with the state line and the line of No. 6684 100 poles to a stake; thence west with said state line and the line of No. 6684, 80 poles to a white oak and locust, the 62 mile tree in the state line and northeast corner of No. 6685?"

A. Yes the white oak is down, the small locust standing yet. The 62 mile tree, the white oak is down.

Q. 59. I read again: "thence with the state line and the line of No. 6685, 320 poles to a hickory, the 63 mile tree in the state line and the northeast corner of No. 6690?"

A. It is standing.

Q. 60. Have you been there?

A. Lots of times, it is standing.

Q. 61. I read again: "thence with the line of No. 6690 and the state line south 30 west 140 poles to a pine." Do you know anything about that pine?

A. Yes, I don't know whether it is standing now but it was the last time I saw it.

Q. 62. I read again, "thence south 65 west with the line of No. 6690 and the state line 170 poles to a white oak, the 64 mile tree in the state line?"

A. It is standing or was a while back.

Q. 63. How long ago?

A. Six months.

Q. 64. State whether or not it has got any "64" on it?

A. I did not see that.

Q. 65. I read "thence with the line of No. 6690 and the state line west 60 poles to the Tennessee river?" State whether or not
1436 where that line ran out at the Tennessee river, you found any marked tree?

A. Yes marked timber all the way on the line to the river.

Q. 66. What was standing on the north bank of the north bank of the Tennessee river?

A. A spruce pine marked the state line, two hacks. I think they had been blocked out since I ran it.

Q. 67. State whether or not there was a blaze in connection with hacks?

A. I think a blaze.

Q. 68. State where that pine tree was with reference to the mouth of Slick Rock?

A. About three quarters of a mile above it it is over half a mile.

Q. 69. Did you go to the mouth of Slick Rock from that pine?

A. Yes sir.

Q. 70. State whether or not it is further around to Slick Rock Creek on the north side than on the south side?

A. Yes a good deal further.

Q. 71. You have been down that river from where you found the marked pine to the mouth of Slick Rock?

A. Yes sir.

Q. 72. Who with?

A. With no surveyor, but with others, it used to be our hunting ground for years.

Q. 73. Going down the state line from the 61st mile tree you have described toward the Little Tennessee river, I will ask you to state the most notable object on the south side of the river?

A. Well sir, what we call the Hang Over lead comes in just below where the state line strikes the river on the north side, it comes in below where our line is, the Hang Over divide comes in below where the state line goes through, about the mouth of Slick Rock Creek.

Q. 74. Do you mean that line you ran up on the beginning of that survey?

A. Yes sir.

Q. 75. Comes in below where you found the pine tree on the south side?

A. Yes a good half mile.

1437 Q. 76. Going back to the question about the notable object on the north of the river going down that line from the 62 mile tree can you see Hang Over mountain?

A. Yes you can see the Hang Over divide that comes down. I don't know whether you can at the river, but you can on the mountain at the 61 mile tree. I don't believe you can see it after you pass the 64 mile tree.

Q. 77. State what you mean by getting down under there? You mean on the north bank of the river opposite the bluff?

A. Yes sir.

Q. 78. Now what is the character of the country south of the river nearly opposite this pine tree?

A. That is what we call the Hang Over divide, the lead.

Q. 79. State whether or not it is level or a bluff?

A. A kind of bluff, hilly. After you get to the top it pitches off pretty rough there.

Q. 80. Who were you with on this survey you have been talking about from the 62 mile tree to the pine on the bank?

A. With this man Stout.

Q. 81. Was Lovingood there with you?

A. Yes he ran all the land out there. I go and show men yet where the land is, the- come to look at the timber there and some years ago they had a dispute about the timber. Hizer and some parties, and I showed that 64 mile tree as far down as it went.

Q. 82. When you lived in Graham County were you living on your own land?

A. Yes sir.

Q. 83. Do you own land in Swain County?

A. No I own in Graham yet.

Q. 84. State what you have heard any old people say in that country about the location of that line south of the river, whether it was Hang Over or up Slick Rock Creek?

A. I remember when I was a boy 35 or 40 years ago I remember old people talking about when you got into Slick Rock Gap that is as far as North Carolina went.

1438 Mr. SONDLEY: The State of North Carolina objects to testimony of declarations of old people as hearsay.

A. That is what they told me.

Q. 85. And that Slick Rock Gap to which you refer on the ridge was a dividing line leading from Hang Over peak down to the Tennessee river?

A. Yes, it makes a deep gap and rises again and comes to the river when it turns over the gap it is steep to the creek.

Q. What old people in the country told you that?

A. My grand-dad-y Kirkland and I heard a good many other old folks talking about it.

Q. 87. When did you first hear of the claim over there in that country that the line ran up Slick Rock Creek?

A. It has been since the logging work started up, it has been about 16 or 18 years I believe since I knew anything about that dispute.

Q. 88. Personally you don't know?

A. No, not a thing.

Q. 89. Where the line is?

A. No sir.

Q. 90. And what you have testified about Hang Over lead is the general understanding of the people in that country?

Mr. SONDLEY: The State of North Carolina objects to this testimony because leading and seeks to get out declarations of a general understanding.

Q. 91. State whether or not there was a general understanding prior to 16 or 18 years ago that that state line south of the river ran along Hang Over lead?

Mr. SONDLEY: The State of North Carolina objects to this question because leading and asks for a general understanding and is not competent.

A. Yes I have heard old people talk and since this timber got to be worth so much they put it at two or three different places then I heard they wanted it on the Fodder Stack divide, and the
1439 creek, but back when I was a boy it was counted that Slick Rock Gap was on the state line.

Q. 92. You say since the timber became valuable you have heard of two or three places they put it at, and one along Fodder Stack?

A. Yes sir.

Q. 93. Little or Big Fodder Stack?

A. Little and big both.

Q. 94. What official position if any did you hold in Graham County?

A. Overseer of the road eight years on a straight when I moved next to this state line.

Q. 95. How close were you to the line?

A. I moved into the fork of Cheoee and Tennessee rivers where the state line goes to the river is a little over two miles from home.

Q. 96. You lived in the junction between the Cheoee and the Tennessee?

A. Yes sir.

Q. 97. How close to the Little Tennessee?

A. Three quarters of a mile.

Q. 98. And to the Cheoee?

A. Half a mile, right in the fork.

Q. 99. How far from Hang Over lead?

A. I reckon about three miles.

Q. 100. Did you ever hold any other office in Graham County?

A. Yes, on the school committee.

Q. 101. Were you School Commissioner?

A. Yes sir.

Q. 102. What were your duties then?

A. Numbered all the people's children.

Q. 103. Subject to school age?

A. Yes from 6 to 21.

Q. 104. What were your duties as road overseer?

A. Warning every man to work the road from 18 to 45 years old.

Q. 105. State whether or not the state line there between North Carolina and Tennessee was the western boundary of your road district or School Commissioner district?

1440 A. Yes, west of it.

Q. 106. That was your western boundary?

A. Yes sir.

Q. 107. Wherever the state line was?

A. Yes from the State line back east.

Q 108. State whether or not you ever warned anybody to work the roads in your country living in the Slick Rock territory?

A. Yes I aimed to warn them. But these justice of the peace and the County Commissioners when I told them I was going to work those men they said not to do it for they were in Tennessee and to let that pass by and I didn't warn them. And also about numbering them for the schools. I thought it would make more money to have them in, and they objected to that.

Q. 109. Who objected?

A. The School Board.

Q. 110. The County School Board of N. C.?

A. Yes, they said we couldn't do that.

The State of North Carolina objects to declarations of the County School Board or its action as irrelevant.

Q. 111. So you would like to swell your roadworkers and school children by going beyond Slick Rock gap?

A. Yes sir.

Q. 112. But they would not let you?

A. Yes they said we couldn't because it was in Tennessee.

Q. 113. Do you know anything about some people living there in between Slick Rock and Hang Over ridge getting into a fight?

A. It was our men from our side, went there hunting and got in a fight between Slick Rock and Hang Over.

Q. 114. What happened to them?

A. They got into a bad thing and drew guns and our courts indicted them at Robbinsville and when they came to a trial they found they came from over the Hang Over divide and the judge would not try it because it was in Tennessee.

1441 Q. 115. Who was that man?

A. Carringer.

Q. 116. What was his name?

A. Will and Elsberry Carringer.

Q. 117. How long ago was that?

A. Something near 34 or 35 years ago.

Q. 118. You present at the trial?

A. Yes, sir.

Q. 119. Where was it?

A. At Robbinsville.

Q. 120. In Graham County?

A. Yes, sir.

Cross-examination.

By Mr. SONDLEY:

Q. 121. When was this you would not warn the hands to work?

A. Eight or ten years back I served.

Q. 122. How long ago has it been since your eight years ran out?
A. Ten years.
Q. 123. So it is 18 years ago it began. How long since you ceased to be road overseer?
A. When I was 45 years old.
Q. 124. When was that?
A. Ten years ago.
Q. 125. Then 18 years ago you began to be road overseer?
A. Something near.
Q. 126. How long since you ceased to be School Commissioner?
A. Until I went out of the road business.
Q. 127. You knew 18 years ago that this disputed territory was claimed by many to be in North Carolina?
A. Not until we went to work there and Tennessee stopped them from logging.
Q. 128. That is not the question. Please answer the question and the arguments can come afterwards. When did you first
1442 learn of the claim of the part of North Carolina to this territory?
A. I couldn't tell for certain.
Q. 129. Approximate it?
A. 18 or 20 years ago when this timber business came up.
Q. 130. During all this time you were not warning people to work on the road, and during the time you were not collecting school taxes, or counting the children,—you knew North Carolina was making claim to that land?
A. I heard it belonged to us.
Q. 131. You knew it was claimed by North Carolina?
A. I did not know it.
Q. 132. You didn't know the claim?
A. I didn't know North Carolina owned it.
Q. 133. You knew the claim was being made in behalf of North Carolina?
A. Yes, I knew North Carolina claimed it. I did not know it that number of years ago. I heard of people saying it when I was around Fodder Stack and I wanted to warn the men and they said no.
Q. 134. That was 18 or 20 years ago?
A. Yes, sir.
Q. 135. You just let somebody say don't do it although you knew North Carolina was claiming it?
A. I had to be governed by the men who put me in.
Q. 136. Who were they?
A. The justice of the peaces they had power.
Q. 137. You didn't work these people during that time?
A. No, sir.
Q. 138. And didn't have the matter tested?
A. No, I spoke to them about warning them and they said not to.
Q. 139. What did you do?
A. I didn't work them.
Q. 140. You concluded you wouldn't?
A. I couldn't work them.

Q. 141. Nobody had a right to control you did they in working them?

A. Yes, you have to be governed by them.

1443 Q. 142. You think if a justice of the peace comes out and tells you not to work them you have to quit?

A. Yes, they had power.

Q. 143. That is your knowledge of your duties, that a justice of the peace controls you?

A. Yes, sir.

Q. 144. And that is your notion if a justice of the peace tells you not to when you are a school commissioner you don't count them?

A. Yes, you have to be governed by what they say.

Q. 146. Who were these justices of the peace there telling you not to do this work?

A. Garrison was one and Kinzie Grant.

Q. 147. What is Garrison's name?

A. Bill Garrison.

Q. 148. Who else told you not to?

A. There are about two or three.

Q. 149. You don't know the others?

A. No, not now.

Q. 150. Do you know Green Phillips?

A. He was on the upper end.

Q. 151. You don't know what office he held?

A. No, sir.

Q. 152. You never knew?

A I don't know.

Q. 153. Do you know Marion Carringer?

A. Yes, sir.

Q. 154. What office did he hold?

A. I don't know of any.

Q. 155. You say I believe that Hang Over ridge strikes the Tennessee river at the mouth of Slick Rock Creek?

A. Yes, sir.

Q. 156. And that you say is three quarters of a mile below where the state line reaches the river on the north side?

1444 A. Yes, I think near three quarters, it is over half a mile on the north side.

Q. 157. You have no doubt about those two propositions?

A. I think it is that way.

Q. 158. You are certain, first,—that Hang Over strikes the Tennessee river just at the mouth of Slick Rock?

A. Yes, sir.

Q. 159. And that the state line strikes it on the other side three-quarters of a mile up the Tennessee river?

A. Yes, sir.

Q. 160. You were there with Lovingood?

A. Yes, sir.

Q. 161. Didn't Lovingood run up Slick Rock Creek on that survey?

A. No, sir.

Q. 162. You are sure he never went there?

A. Not when I was with him because the Thomas land didn't go up that creek.

Q. 163. You were with him?

A. May be he did on other surveys but I was with him all the way on the Thomas survey.

Q. 164. And he didn't go up Slick Rock Creek?

A. No, sir.

Q. 165. You are sure?

A. Yes, sir.

Q. 166. Let's see about following the Thomas boundaries.—I believe you said you ran No. 920?

A. Yes, sir.

Q. 167. And that runs along with No. 611?

A. I don't know.

Q. 168. Doesn't it call for 611?

A. It did not say it there when it started.

Q. 169. You never struck Slick Rock Creek after you started?

A. No, sir.

Q. 170. Never paid any attention to it?

1445 A. The Creek was on the right and we went to the left.

Q. 171. You never went to it any more?

A. No, sir.

Q. 172. I read you that description and ask you to look about that No. 920. You knew very well there was a controversy that 920 could not be surveyed according to its calls?

A. No, I don't know, it might be in the last part of it. If it ain't right I will tell you.

Q. 173. I read from the survey of No. 920 by J. W. Pearcy "beginning on a small spruce pine"?

A. It was a stump.

Q. 174. It says "one pole northeast of the corner of No. 611"?

A. About a chain I reckon, you might say ten steps from the creek.

Q. 175. On the southwest?

A. No, on the southe-st.

Q. 176. It says "northeast one pole from the corner of No. 611?"

A. I don't know about that other corner.

Q. 177. That would be No. 611 on the other side of Slick Rock?

A. Southwest would, yes.

Q. 178. So, then No. 611 had its corner on the west side of Slick Rock?

A. I did not run that tract.

Q. 179. You started to run this?

A. Yes. No. 920.

Q. 180. You had to know where to begin?

A. We began on the east side of the creek.

Q. 181. It said northeast one pole of No. 611?

A. If it went to the pine it would throw that other tract on the west side.

Q. 182. You were following this description?

A. Of No. 920 I was. I don't know about the other corners you speak of.

Q. 183. You don't know whether you started at the right place?
A. It said the mouth of Slick Rock Creek.
Q. 184. It said one pole northeast of No. 611?
1446 A. We started on the east side of the creek, I didn't run that.

Gen. CATES: The State of Tennessee objects to counsel arguing with the witness.

Q. 185. You know all about the pine but you don't know where the corner of No. 611 is?
A. No, I don't know a thing about the other tract.
Q. 186. You didn't pay attention to anything but the pine?
A. There was some witness to it.
Q. 187. It says south 25 east 221 poles to a corner. You would be going you say not up Slick Rock but between Cheoee river and Slick Rock?
A. Yes, sir.
Q. 188. The next call is "thence with that line north 65 east 220 poles." That would carry you across towards the Tennessee river?
A. If you turn across it would.
Q. 189. You would be over the Tennessee river?
A. I don't know about that. The Tennessee river runs west there before it comes to the creek.
Q. 190. You get over south 25 east 221 poles and then turn north 65 east 220 poles which is more east than north?
A. Yes, but I don't know whether you would cross the river.
Q. 191. You would be going towards the river all the time?
A. If you turned north it would.
Q. 192. That is not the way you ran it?
A. Not across the Tennessee river, we were leaving the Tennessee river.
Q. 193. You did not follow those calls?
A. We followed No. 920 calls.
Q. 194. Did you go north 65 east 220 poles from the first line?
A. We ran with the paper.
Q. 195. You ran towards the Tennessee river?
A. No, away from it.
Q. 196. North 65 east 220 poles would take you toward it, isn't that a fact?
A. If you turned north you would, yes.
Q. 197. As a matter of fact if that thing were platted that
1447 way the lines would cross each other and don't you know that is so?
A. I know the way we started we went between the creek and the Tennessee river up that divide and that is all I can tell you.
Q. 198. You cannot tell where you went from there?
A. Across Hang Over and cornered over the hill and turned and struck Slick Rock Gap and cornered on a black oak just above the gap.
Q. 199. After you went to the end of the first line did you turn to the right or left?
A. To the right.

Q. 200. And not to the left?

A. No, to the right.

Q. 201. It says after the end of the first line "beginning at a pine on the state line and runs with the state line south 25 east 221 poles to a corner, thence with that line." Now did you run from there with the state line or with the line of No. 611?

A. We ran with our calls and the next put us to a black oak.

Q. 202. You didn't know what line it was?

A. No, sir.

Q. 203. You didn't know whether it was the state line?

A. No, I didn't pay attention only what I was running on.

Q. 204. You didn't pay attention to the calls for another line?

A. Only what we were running on.

Q. 205. You say you never came back to Slick Rock Creek. I find further down in the description of No. 920 the following: "thence south 45 west 46 poles to a white oak on Devil's Bear Creek and Slick Rock." You never got back to Slick Rock?

A. No, we never come back.

Q. 206. I read from page 22 of the proof taken on behalf of North Carolina of entery No. 611 as follows: "John J. Turnbill & Co. enters 320 acres of land in Cherokee County, N. C., beginning at a stake on the south bank of the Tennessee River?"

A. Yes, sir.

Q. 207. And further "on the state line at the mouth of Slick Rock Creek?"

1448 A. Yes, sir.

Q. 208. (Reading:) "Running up said creek with the said state line and various courses for complement?"

A. I never helped run that line. I know where the mouth of the creek is.

Q. 209. If you would run up Slick Rock Creek with the state line it would be there?

A. Yes, if it is there.

Q. 210. If that is No. 611 it puts the state line and Slick Rock Creek together?

A. Yes.

Q. 211. If you followed the state line as called for in No. 611 you would have gone up Slick Rock.

A. I never ran that trac*k*.

Q. 212. Do you know anything about the litigation in North Carolina of Bailey against Hopkins?

A. I heard of it.

Q. 213. That suit was based very largely upon the fact that No. 920 had some calls that could not be surveyed accurately as to course and distance but only as to natural objects?

A. There was something about it.

Q. 214. Hopkins gained it off the Baileys?

A. Yes, sir.

The State of Tennessee objects to counsel endeavoring to prove the record in the Hopkins against Bailey case by oral testimony.

Q. 215. Thomas was a defendant with the Baileys?

A. Yes, sir.
Q. 216. That suit was affirmed in North Carolina?
A. I hear so.
Q. 217. That was very largely on the inaccuracy of the calls of No. 920?
A. Yes, sir.
Q. 218. That was about Slick Rock Creek?
A. Yes, up Cheoee river to pretty near Bear Creek.

1449 The State of Tennessee objects to the attempt to prove by parole what was at issue and dicided in the case of Hopkins against Bailey supposed to be an action at law or in equity pending or decided in the courts of North Carolina.

A. It was not below the creek it was all above the creek.
Q. 219. The court decided Slick Rock was the boundary of 920?
A. No, sir.
Q. 220. Isn't that the reason they lost it?
A. No, it is two miles above Slick Rock. That suit was not about Slick Rock at all.
Q. 221. Wasn't all of No. 920 embraced in it?
A. Yes, all in the lawsuit but it cut off a little corner to Slick Rock and the other party gained a little strip towards Cheoee.
Q. 222. You don't think it runs to the mouth of Slick Rock?
A. Yes, but not up the creek.
Q. 223. The State didn't establish a boundary there?
A. No, sir.
Q. 224. You are sure of that?
A. Yes, sir.
Q. 225. You are not a surveyor?
A. No, sir.
Q. 226. All you know about the matter is when you were helping some to survey?
A. Yes, sir.
Q. 227. Whose son are you?
A. George Williams.
Q. 228. What kin was he to Wm. Williams?
A. A brother.
Q. 229. You are a cousin of O. P. Williams?
A. Yes, sir.
Q. 230. You are also a nephew of James Williams an old gentleman?
1450 A. Yes, he is an uncle of mine.

The further taking of these depositions was adjourned until 2 p. m.

At 2 p. m. the further taking of these depositions was continued.

Re-examination of A. C. WILLIAMS.

By Gen. CATES:

Q. 231. On cross-examination counsel for North Carolina referring to a survey of a warrant No. 920 by J. W. C. Pearcy and found

in the proof offered by North Carolina, read to you from the second call in that survey as follows: "then with that line north 65 east 220 poles to the corner of No. —." As I understood you when you and Lovingood ran that line for Thomas you did not run on that course and at that distance?

A. I knew nothing about running with any other line. The second call you mean?

Q. 232. Yes, in Pearcey's survey or field notes of warrant No. 920?

A No sir I don't remember any other line.

Q. 233. Now returning to this paper purporting to be a copy of deed from James R. Thomas et al. to J. S. Bailey I again read the first call, "beginning at a black gum on which are old marks indicating a fallen spruce at a corner on the south bank of the Tennessee river at the mouth of Slick Rock Creek and in the state line and about one pole northeast of the corner of No. 611 and runs with the state line south 25 east 293 poles to a dogwood on which are old pointers indicating a fallen chestnut as a corner, and supposed to be a corner of No. 611." Now I read the second call as set out in the description contained in a deed as follows, "thence south 55 west crossing Tallassee trail at 192 poles, 208 poles to an old black oak corner, now down, still showing old marks." Please tell us whether you ran that call?

A. Yes, ran that.

Q. 234. Did you find an old black oak on it?

A. Yes, standing just above the Slick Rock gap, right
1451 on the divide, just above the trail apiece not over 50 or 60 yards.

Q. 235. You mean just above the Slick Rock Gap in the lead from Hang Over to the river?

A. Yes sir.

Q. 236. I now read to you the third call in said deed as follows: "thence south 10 west 74 poles to a stake where an old chestnut corner formerly stood." Did you run that line?

A. Yes sir.

Q. 237. How did it run?

A. Right center up the divide.

Q. 238. I now read the fourth call in that deed, "thence south 26 poles to a pine stump and old pointers."

A. I ran that, it was a little on the east side of the divide that pine is.

Q. 239. Then I read the next call as follows, "thence south 47 west 48 poles to a white oak, old marked corner on the divide between Bear Creek and Slick Rock Creeks."

A. Yes that is right, on the top, on the line.

Q. 240. Right on the top of what?

A. The Hang Over lead that comes down.

Q. 241. Now I read again the next call, "thence south 18 west 123 poles to three chestnuts, old corner near top of Hang Over lead?

A. That is a little on the right, on the west side, just a fraction over the hill.

Q. 242. The next call is as follows, "thence south 16 east 256 poles to a chestnut on top of a ridge, an old corner." Did you run that line?

A. Yes I ran that line.

Q. 243. The next call is as follows, "thence north 65 east 206 poles to a forked black oak near top of a ridge, an old corner.

A. Yes I ran that.

Q. 244. The next call is "thence north 88 east 46 poles to a chestnut oak, an old corner?

A. Yes, we ran that.

1452 Q. 245. The next call is, "thence south 55 east crossing Bear Creek at 104 poles and crossing the old Tallassee trail at 180 poles and crossing Barker's Creek at 384 poles, in all 665 poles, to a white oak in a cove, an old corner."

A. Yes we found that.

Q. 246. State whether or not where that line is whether on the east or west side of Hang Over?

A. It is two miles on the east side of Hang Over ridge,—that is now.

Q. 247. The next call is, "thence north 75 east crossing Deep Creek at 232, and crossing Tallassee trail at 364 poles, in all 460 poles to a maple, now down, and pointers?"

A. Yes sir.

Q. 248. That is still east of Hang Over?

A. Yes, getting further away from Hang Over.

Q. 249. I read the next call, "thence north 18 east 117 poles to a spruce pine on a rock cliff, an old corner?"

A. Yes sir.

Q. 250. Still east of Hang Over?

A. Yes, way up on Cheoee river now.

Q. 251. I read the next call, "thence north 35 west 45 poles to a chestnut oak, an old corner on the bank of Cheoee river?"

A. Yes we ran that.

Gen. CATES: I do not care to read further from this description contained in the Thomas deed, but submit it to counsel for North Carolina for examination if desired by them.

Q. 252. So as I understand your description of the running of that line from the pine stump just above the mouth of Slick Rock Creek south 25 east 293 poles, it carried you across the summit of Hang Over ridge?

A. Yes sir.

Q. 253. And the further running of the calls that I have read were around land which lies beyond the east side?

1453 A. Yes sir.

Q. 254. Of Hang Over ridge?

A. Yes sir.

Q. 255. How often have you been on that Hang Over ridge?

A. I don't know. I have been on it many a time.

Q. 256. Please state whether or not you are familiar with its general direction and its topography, that is the general contour

and shape of the ridge or lead from Hang Over down to the Tennessee river?

A. Yes, I am familiar with all of it from Hang Over down.

Q. 257. Describe in a general way that ridge from Slick Rock Gap north to the Tennessee river, and if at any point it divides into one or two branches describe that and how many branches?

A. There is one after you pass Slick Rock gap, one lead turns off up a mountain to the right or east and goes into Cheoee river about a quarter of a mile above the mouth of Cheoee river, the right hand lead does; and another ridge between those two.

Q. 258. What two?

A. The one that comes to the mouth of Slick Rock.

Q. 259. Then one branches to the left and comes in just above the mouth of Slick Rock Creek?

A. Yes, and one goes in just a little grain above where the state line on the north side comes, it cuts right down again to the river, the middle of the ridge; there are three forks to it.

Q. 260. Please examine this Exhibit "A" to the answer——

A. (Interrupting.) I mean three ridges, only two forks; three ridges come in, one to the Cheoee and two to the Tennessee river.

Q. 261. Examine Exhibit "A" to the answer and cross-bill of the State of Tennessee in this lawsuit purporting to show division of the main Slick Rock ridge coming down from Hang Over toward the river at a point south of the river, one purporting to lead off to the right and one purporting to lead off to the left and reaching the Tennessee river between the mouth of Slick Rock and the river?

A. Yes sir.

1454 Q. 262. Then a middle one between these two?

A. Between those two.

Q. 263. Which runs more directly to the river?

A. Yes sir. More straight, it doesn't turn any way.

Q. 264. Is that map approximately as you understand that?

A. Yes, that's it.

Q. 265. Not approximately, but it?

A. That's it.

Q. 266. And it was up this left hand ridge leading down here to the river above the mouth of Slick Rock that you and Lovingood ran that first line?

A. Yes sir.

Q. 267. In the survey described in the Thomas deed?

A. Yes that is it.

Recross-examination:

Q. 268. You say you ran with Lovingood this No. 920 the way the description was read to you on your redirect examination just now?

A. Yes up that ridge.

Q. 269. Please give the first line running from the river, the small spruce pine?

A. Yes sir.

Q. 270. About one pole from the northeast corner of No. 611 the first line you said you ran south 25 east to a corner?

A. Yes sir.

Q. 271. It was 293 poles I believe you said?

A. Well whatever I have sworn to, the one that was read to me.

Q. 272. Which do you say it is that you ran 221 or 293 poles?

A. I disremember now, but No. 920 runs a chestnut tree down with a dogwood witness.

Q. 273. You don't know how many poles?

A. Not for certain.

Q. 274. The grant said you should run 221 poles to a
1455 corner. If you went more than that you violated the terms of the grant?

A. We went to the corner where it was down, I will not say as to the number of poles.

Q. 275. The next line is "thence with that line 65 east 220 poles to the corner of No. 405." I am reading from the grant and the calls, "thence with that line north 65 east 220 poles to a corner of No. 405." You said you didn't run such a line as that?

A. The second run? I don't remember about that.

Q. 76. But the next line you ran was this as I understand you: "thence with its line south 53 west crossing the Tallassee ford"?

A. I remember that.

Q. 277. That was the second one you ran?

A. Yes sir.

Q. 278. Then you left out the second run entirely?

A. I did it as I swore to it, I can run to the corner trees.

Q. 279. Did you run that line or not, the north 65 east 220 poles or not?

A. What does it run to?

Q. 280. To the corner of No. 405?

A. I don't remember.

Q. 281. (Reading.) "Thence south 53 west crossing Tallassee ford" that is the second line you ran?

A. Yes, to a black oak.

Q. 282. You disregarded the second call to make the second call fill the state line?

A. I don't remember that second call now.

Q. 283. After that you were going south all the time nearly?

A. Yes the first call ran southeast away from the creek.

Q. 284. Then I ask you again if it was not a fact in order to make that run of yours fit the testimony you had to exclude the second call of the grant of "north 65 east 220 poles to a corner of No. 405." You didn't run such a line as that?

A. I don't remember.

Q. 285. Did you run that?

1456 A. I know I did not run north. I don't remember that.

Q. 286. You know you didn't run any such line as that?

A. No, north would have taken me across the Tennessee river.

Q. 287. To make that first line the state line you had to discard

the second line which would have thrown you over the Tennessee river?

Gen. CATES: The State of Tennessee objects to this question as calling for a conclusion, and an argument on the part of the witness.

A. We never ran on that side of Hang Over. Those three chestnuts just turned the ridge a little grain.

Q. 288. You didn't run that line northeast?

A. No, I don't remember running that line which would put a man across the Tennessee river, or Cheoee one.

Q. 289. I believe you said in order to go up Hang Over ridge you had to go south from the spruce pine on the north side of the Tennessee to the mouth of Slick Rock?

A. No, that divide goes in above the mouth of Slick Rock.

Q. 290. Any above?

A. Yes sir.

Q. 291. One pole from the other side?

A. I don't know. I never measured the other side.

Q. 292. It is on the other side of where you started?

A. I wasn't running only by one paper No. 920. I don't know anything about below the mouth of the creek.

Q. 293. You were running the 920?

A. Yes, I wasn't hunting any other corners.

Q. 294. What grant were you running?

A. 920 was my understanding.

Q. 295. You did begin just at the mouth of Slick Rock Creek?

A. Yes sir.

Q. 296. You testified that in order to go over Hang Over you had to go down there?

1457 A. Yes it is down the river, the mouth of Slick Rock is.

Q. 297. What did you say about going up over Hang Over?

A. Hang Over is divided, one of them does come in at the mouth of the creek.

Q. 298. Didn't you say you had to go that way?

A. No. That ridge that comes to the mouth of the creek divides the waters between Slick Rock Creek and Tennessee river.

Q. 299. Didn't I ask you on cross-examination and didn't you say it was necessary to go up Hang Over to go down to the mouth of Slick Rock?

A. I don't remember saying such a word as that.

Q. 300. Do you deny you said it?

A. That there was no other way to get out of there?

Q. 301. Didn't you say to get off Hang Over you had to go to the mouth of Slick Rock?

A. No, I don't remember saying that because there is one fork comes in at the mouth of the creek, the main divide, I call it, comes in at the mouth of the creek.

Q. 302. Didn't you say in order to go up Hang Over you had to go to the mouth of Slick Rock?

A. If I said it I don't remember it.

Q. 303. Didn't you say Hang Over ends there?

A. Yes at the mouth of the creek.

Q. 304. No doubt about that?

A. No doubt about it. Hang Over divide comes in at the mouth of the creek.

Q. 305. You said on re-examination something about Hang Over making prongs?

A. Yes. I call it Hang Over ridge that comes straight down and parts two waters.

Q. 306. You said there was still another fork that ran in between?

A. Yes between.

Q. 307. At the mouth of Slick Rock?

A. No, one between the mouth of the creek and this one that runs into Cheoee river.

1458 Q. 308. One then at the mouth of Slick Rock?

A. Yes, three ridges.

Q. 309. You said it tallied with this map shown you as Exhibit "A" to the defendant's answer?

A. No, I said the middle ridge come a little above where the state line did on the other side.

Q. 310. Didn't you say this map showed the situation?

A. I said what I swore was so.

Q. 311. Didn't you say this map showed the situation?

A. I said I knew that was so.

Q. 312. Then this map does not show it?

A. I said the mouth of Slick Rock and the ridges are so.

Q. 313. Then you did not say this map is it?

A. If that is it I said it.

Q. 314. Do you say this map showed it or do you say it does not represent it truly? The Hang Over ridge condition as it approaches the Tennessee river there?

A. I said there was one ridge went in to the mouth of the creek, and one at the mouth of Cheoee river, and one in between.

Q. 315. Do you say that map shows the thing properly?

A. General Cates showed me and I told him what I said.

Q. 316. Didn't you say that map truly showed it?

A. No sir.

Q. 317. Then it does not?

A. No, I said the way I swore is the way it was.

Q. 318. You say what you swore was the truth?

A. Yes sir.

Q. 320. You don't know about the map?

A. No, I said what I said about the ridges is so.

Q. 321. So, you don't know whether the map is so?

A. I never examined it.

Q. 322. You never examined it and you don't know?

1459 A. I didn't swear to that map, I said what I said about it was so.

Q. 323. Did you ever hear of a survey known as the Andy Colvert survey?

A. Yes sir.

Q. 324. No. 1035?

A. I have heard of them.

Q. 325. That is on page 14 of the proof, now tell me where this thing would make the state line. I am going to read the description of the Pearcy survey "beginning on a beech tree on the State line where the Hang Over Mountain strikes the said line near the corner of No. 5051 and runs with that line south 80 E. 320 poles to a mountain oak, then with the line of No. 4455 N. 40 E. 320 poles to a Spanish Oak: thence N. 45 E. 28 poles to two water oaks: thence E. 92 poles to a large oak on top of the second high peak of the Hang Over: thence S. 70 E. 98 poles to a Spanish Oak: thence S. 20 E. 150 poles, thence E. 160 poles to a Spanish Oak on a rock: thence E. 60 poles to a hickory: then with the meanders of the said mountain N. 70 E. 250 poles to a corner of No. —, then S. 70 East 320 poles to a Spanish oak: thence S. 50 W. 420 poles: then N. 65 E. 40 poles: then N. 75 E. 126 poles: thence N. 40 E. 260 poles: thence E. 54 poles: thence N. 55 E. 160 poles: thence N. 65 E. 100 poles: thence N. 40 E. 60 poles: thence N. 50 E. 124 poles to a service tree on the bank of the Cheoee River." Do you know where it is?

A. No sir.

Q. 326. Do you know where it would strike Cheoee river?

A. Yes sir.

Q. 327. Then down the Tennessee river?

A. Yes sir.

Q. 328. Then to the state line, the mouth of Slick Rock?

A. Yes sir.

Q. 329. Then with the state line to the top of the Rock Stack. Do you know where the Rock Stack is?

A. Yes sir.

Q. 330. How would that be? Would it be up Slick Rock Creek?

A. Yes, that way.

1460 Q. 331. Then turn up the ridge?

A. Yes sir.

Q. 332. Then with that line to the beginning?

A. I never helped run that, but according to that it would be that way.

Q. 333. Then this survey does make Slick Rock Creek the state line?

A. If you get to the Rock Stack you would have to go that way.

Re-examination:

Q. 336. In your last cross-examination you stated that Hang Over divide ends at the river above the mouth of the creek?

A. Yes sir.

Q. 337. Isn't it a fact part of that ridge also ends at the river just above opposite where you found that pine?

The State of North Carolina objects to this question as leading.

A. Yes just a little grain above, just a fraction above.

Q. 338. Then part of that ridge ends at Cheoee river?

A. Yes, above the mouth of it.

The State of North Carolina objects to that question as leading.

Q. 339. Then state whether or not you meant to say in answer to counsel on your last cross-examination that all of the Hang Over divide ended at the Tennessee river just above the mouth of Slick Rock Creek?

A. Not all of it for one of the divides goes into Cheoee river there.

Q. 340. Now I call attention to this map Exhibit "A" and point out to you again, first what purports to be the main ridge leading from Hang Over northeasterly towards the Tennessee river and that at a point somewhere south of the river, perhaps a mile or a mile and a quarter, I don't know just how far from the scale of this map, the ridge seems to divide into three parts.

A. Yes sir.

1461 Q. 341. One going to the right hand towards Cheoee?

A. Yes sir.

Q. 342. One going to the left to the Tennessee river just above the mouth of Slick Rock?

A. Yes sir.

Q. 343. And a third one between running more direct to the Tennessee river and reaching it at a point about opposite a little mark.—a star—supposed to represent the four and aft pine tree on the side of the river?

A. Yes there is one comes in there. If I had a piece of paper I could show you.

Q. 344. Looking at this map do you understand it as I have tried to explain?

A. Yes I understand what you are trying to mean about it.

Q. 345. Does that map as it appears here before you and as I have explained it to you, correctly show the way that lead coming down from Hang Over spreads and runs to the river in three prongs?

The State of North Carolina objects to this question as leading.

A. Yes, this middle ridge, as we call it, does not come all the way to the river, it pitches off in a bluff but the one just a fraction above come to it. But the one I call the main divide comes in at the mouth of Slick Rock.

Q. 346. The ridge at Slick Rock you think is larger than the one that runs straight to the river?

A. Yes, I think so.

Q. 347. You say the middle ridge running directly to the river bluffs off?

A. Yes, slopes of- straight down, and the other does not.

Q. 348. At the south side of the river bank it is steep?

A. Awful steep, yes.

Q. 349. You were asked about the calls purporting to be set out in Pearcey's notes of warrant No. 920 and as to what you and Lovingood ran that survey by. I present you with a paper

1462 here purporting to set forth the calls of a deed from James R. Thomas et al. to J. S. Bailey and ask you if you have seen this paper before?

A. I never saw that before until this week. Until the other day, if

it is the paper Mr. Williams brought (Examining paper). Yes this is the deed to the land described in it.

Q. 350. You have seen that paper before?

A. I have seen it here but not until I came here, since it has been drawn: that is just the calls of it.

Q. 351. State if those are the calls by which you and Lovingood ran that survey?

A. Yes sir.

Q. 352. Will you make this paper exhibit "A" to your deposition?

A. I do so.

Recross-examination:

Q. 353. This thing shown you marked Exhibit "A" to your deposition is a copy of the calls you ran on with Lovingood?

A. Yes sir.

Q. 354. You are sure of that?

A. Yes sir.

Q. 355. Then you said you ran the calls of Grant No. 920?

A. Yes that is my understanding.

Q. 356. Which did you have, No. 920 or the other something?

A. We had 920.

Q. 357. Then if 920 does not agree with you, it is not what you had?

A. I can tell you all the corner trees.

Q. 358. If 920 does not agree with Exhibit "A" to your deposition, then you didn't run exhibit "A," but you ran No. 920?

A. Lots of times deeds have wrong calls, but No. 920 is what I was running.

Q. 359. Yes I know that; but I ask you if 920 should differ from this Exhibit "A" in any respect, then Exhibit "A" is not what you ran in that respect?

A. I ran what I told you I ran there.

Q. 360. Can't you answer?

1463 A. I don't know; there might be another call or something there; I just swear what I know.

Q. 361. If 920 should differ from Exhibit "A," then you didn't run by Exhibit "A"?

A. They might differ.

Q. 362. If they should, then you ran 920?

A. That is what they said.

Q. 363. And not Exhibit "A"?

A. We said we were running 920 from the mouth of the creek; I don't know about these others.

Q. 364. You had No. 920 before you and not Exhibit "A"?

A. No. 920.

Q. 365. Then if 920 and Exhibit A do not agree you were not running Exhibit "A"?

A. I have seen lots of them and sometimes a man makes mistakes.

Q. 366. What was the first call of this Exhibit A you ran, or 920?

A. The first call from the creek it ran south, I don't remember now, but it left the creek on the east side bearing up that ridge.

Q. 367. You cannot tell the degrees or courses, you only knew it came south?

A. I don't remember the degrees, but it is southeast.

Q. 368. How many degrees?

A. I could not tell.

Q. 369. How far?

A. Two hundred and some odd poles. I ran to the chestnut tree that was down and the dogwood.

Q. 370. What was the course?

A. Southwest the best I remember.

Q. 371. How many degrees?

A. I cannot tell how many poles or degrees, but to the black oak crossing that trail.

Q. 372. What is the third call?

A. South I think. I would not say due south but not far from the black oak corner to the next corner.

1464 Q. 373. You don't know whether it is south or not?

A. It is south some degrees.

Q. 374. Southeast or southwest?

A. I don't know.

Q. 375. How many degrees?

A. I could not tell.

Q. 376. How many poles?

A. I couldn't tell, but to the chestnut tree.

Q. 377. What is the next call?

A. It goes southeast a little grain to a pine?

Q. 378. How many degrees?

A. I couldn't tell.

Q. 379. Do you swear it does not go north?

A. It runs southeast to the pine.

Q. 380. You are sure?

A. I think so.

Q. 381. How many poles?

A. I cannot tell.

Q. 382. What is the next call?

A. I don't know whether to the three chestnuts or oak now. I could not tell you.

Q. 383. Do you know what course it was?

A. South.

Q. 384. How many degrees, if anything or just due south?

A. May be a little west.

Q. 385. You don't know whether it is southwest or not?

A. I think a little grain.

Q. 386. How many degrees?

A. I cannot tell.

Q. 387. You don't know whether it is one or 50?

A. I couldn't tell.

Q. 388. How many poles?

A. I couldn't tell.

1465 Q. 389. What is the next call?
A. After we got to the three chestnuts we turned east.
Q. 390. I am not asking about the three chestnuts. What is the next call?
A. Either to the oak or chestnut.
Q. 391. What is its course?
A. I think it turned a little after it left the pine a little southwest.
Q. 392. How many degrees?
A. I couldn't tell.
Q. 393. How many poles?
A. I couldn't tell.
Q. 394. What is the next call?
A. Pretty near the same I think.
Q. 395. Southwest again.—how many degrees?
A. I couldn't tell.
Q. 396. How many poles?
A. I cannot tell.
Q. 397. What is the next call?
A. That is to the three chestnuts isn't it?

Gen. CATES: The State of Tennessee objects to the continuous cross-examination of the witness in relation to calls of the deed from memory and the State of Tennessee insists that if the witness' memory is to be tested about the calls and whether he ran it that he be allowed to see the call showing the course and distance run.

Q. 398. Now give me the next call please?
A. After it got to three chestnuts it turned northeast I think and left that divide there.
Q. 399. How many degrees?
A. I couldn't tell.
Q. 400. How many poles?
A. I cannot tell. It has been a long time since I ran it.
Q. 401. What is the next call?
1466 A. I believe it calls for a chestnut.
Q. 402. What is the course and distance?
A. I couldn't tell you now because I don't know.
Q. 403. What is the next call?
A. To the chestnut oak and across Bear Creek.
Q. 404. What is the course and distance?
A. It goes 600 poles to a white oak.
Q. 405. What is the course and distance?
A. I could not give the degrees.
Q. 506. How can you swear they are the proper poles?
A. I can look at it and see.
Q. 507. You cannot say it is correct?
A. No man in the county can do it without looking.
Q. 508. How can you testify to it?
A. I testified to that No. 920. No man can tell the degrees.
Q. 509. You don't know the lines or degrees?
A. Yes, some of them.

Q. 510. Which one do you know?

A. I don't remember, but that is the tract I was running.

Q. 511. You said you could tell some of them?

A. I don't know as I can tell the degrees.

Q. 512. Tell the distance?

A. The first is 290 poles I think, I ain't sure.

Q. 513. You will not be positive about that.

A. No I will not without looking. A man is liable to be mistaken.

Q. 514. You can look at the paper and say it is so, but you cannot tell or swear to it without it?

A. I cannot tell it without looking; no man in the county can do that.

Q. 151. Do you mean all the calls in this paper Exhibit "A" to your deposition are the same as the calls in No. 920?

A. Yes, until it comes down to the Cheoca river, I will not say any further.

1467 Q. 516. I understood you to say in your second direct-examination that you would not swear about that map, but you do say that the end of Hang Over was at the mouth of Slick Rock?

A. Yes sir.

Q. 517. Yet on your second re-examination that that was one and not all of the ends of Hing Over?

A. There are two more ridges comes off.

Q. 518. How do you reconcile those statements?

A. I said one came into the creek.

Q. 519. The end of Hang Over is at Slick Rock Creek?

A. Yes, there are two more ridges come off from that.

Q. 520. They are not Hang Over?

A. They go to Hang Over.

Q. 521. You mean they are ridges going to Hang Over?

A. Yes, the main Hang Over goes to the mouth of Slick Rock.

Re-examination:

Q. 522. In all the questions about courses and distances appearing upon the paper Exhibit "A" counsel in cross-examining you had that paper in his hand and you were answering without the paper before you?

A. Yes sir.

The State of North Carolina objects to the above question as leading.

Q. 523. State where that paper was when counsel was cross-examining you in regard to courses and distances?

A. That man had it (indicating).

Q. 524. Do you mean counsel for North Carolina Mr. Sondley?

A. Yes I take it to be he.

Q. 525. A good deal has been said about that Warrant No. 920, this survey by Pearcy which North Carolina has put into the record which winds up by saying "containing 200 acres of land more or

less." State whether or not this description set forth in Ex-
1468 hibit "A" to your deposition contains more than 200 acres?
A. Yes, it is for 4,000 acres.
Q. 526. Then it must contain additional tracts to the No. 920?
A. Yes sir.

Mr. SONDLEY: That is a mistake of the stenographer. It should be 2,000 acres.

And further saith not.

A. C. WILLIAMS.

Sworn to and subscribed before me this the 29 day of Nov. 1910.

——— ———.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

Two days and — miles.

1469 *Copy of Calls of a Certified Copy of Deed of James R. Thomas et al. to J. S. Bailey.*

A certain tract and parcel of land situate, lying and being in the County of Swain, and Graham, in the said State of North Carolina, on both sides of the Tennessee River and bounded and more particularly described as follows:

Beginning at a black gum on which are old marks indicating a fallen spruce as a corner on the South bank of the Tennessee River at the mouth of Slick Rock Creek and in the State line and about one pole North-East of the corner of No. 611 and runs with the State line S. 25 E. 293 poles to a dogwood on which are old pointers' marks indicating a fallen chestnut as a corner, and supposed to be a corner of No. 611; thence S. 55 W. crossing Tallassee trail at 192 poles, 208 poles to an old black oak corner, now down, still showing old marks; thence S. 10 W. 74 poles to stake where an old chestnut corner formerly stood; thence South 26 poles to a pine stump and old pointers; thence S. 47 W. 48 poles to a white oak, old marked corner on the divide between Bear and Slick Rock Creeks; thence S. 18 W. 123 poles to three chestnuts, old corner near top of Hangover Lead thence S. 16 E. 256 poles to a chestnut on top of a ridge an old corner, thence N. 65 E. 206 poles to a forked black oak near top of a ridge, an old corner; thence N. 88 E. 46 poles to a chestnut oak, an old corner; thence S. 55 E. crossing Bear Creek at 104 poles, and crossing the old Tallassee trail at 180 poles, and crossing Barker's Creek at 384 poles, in all 665 poles, to a white oak in a cove an old corner; thence N. 75 E. crossing Deep Creek at 232 poles, and crossing Tallassee trail at 364 poles in all 460 poles to a maple, now down, and pointers; thence N. 18 E. 117 poles to a spruce pine on a rock cliff an old corner; thence N. 35 W. 45 poles to a chestnut oak, an old corner on the bank of Cheoah River; thence

down said River with its meanders 453 poles to a leaning black gum on the South bank of said river, and on the line of No. *of* 1727; thence with the line of No. 1727 N. 45 E. 86 poles to a chest-
1470 nut oak on a rock cliff, an old corner, thence with the line of No. 1727 N. 20 W. crossing Robbinsville on Cheoah Turnpike Road at 86 poles crossing Meadow Branch at 142 poles, in all 295 poles to a pine, the South-West corner of No. 1728; thence N. 87 East with the line of No. 1728, 304 poles to a small hickory, the North-West corner of No. 595 on the South side of a ridge; thence S. 45 E. crossing Robbinsville on Cheoah Turnpike at 54 poles, 100 poles to a beech, the beginning corner of No. 1398; thence S. 83 W. 136 poles, crossing the Robbinsville on Cheoah Turnpike at 113 poles to a post oak and old corner; thence S. 40 E. crossing said road ten poles crossing a branch at 20 poles 127 poles to a chestnut oak near the top of a mountain; thence N. 82 E. 170 poles to a small hickory on the line of 595; thence with the line of 595 S. 45 E. 120 poles to a chestnut oak, the South-West corner of No. 595; thence N. 72 E. with the line of No. 595, 400 *hundred* poles to small white oak the South-East corner of No. 595; thence N. 40 W. with the line of No. 595 170 poles to a black oak, the North-East corner of — 595 and a corner of the Whitaker tract; thence West with the line of the Whi-aker tract and Ryner tracts 570 poles to the line of No. 1728; thence with the line of No. 1728 N. 20 W. 270 poles to a maple on the South bank of the Tennessee River; thence up the Tennessee River with its meanders about 1559 poles to a hickory, the South-East corner of No. 6703 in Swain County; thence with the line of said last mentioned number (6703) N. 20 E. 440 poles to a locust on the East side of Luellen Branch of the North-West corner of No. 6702; thence with the line of 6702 South 432 poles to a chestnut oak on the North bank of Tennessee River; thence up said river with its meanders about 452 poles to a fallen white oak marked as a corner the beginning corner of No. 6702 in Swain County; thence North with the line of No. 6702, 140 poles to a pine stump; thence with the line of No. 6702 N. 20 E. crossing a branch at 76 poles 180 poles to a chestnut on a rocky mountain side, the North-East corner of No. 6702; thence West with the line of No. 6702 crossing a branch at 66 poles 320 poles to a locust, the North-West corner of No. 6702 and the North-East corner of
1471 6703; thence with the line of No. 6703 West 274 poles to a white oak and service near a small branch; thence S. 20 W. 80 poles to a stake, the North East corner of No. 6708; thence with the line of No. 6708 N. 60 W. 380 poles to a chestnut on East side of Twenty Mile Creek; thence S. 20 W. 635 poles to a white oak and maple on the North bank of the Tennessee River South East corner of No. 6701; thence North with the line of No. 6701, 390 poles to a stake, the North East corner of 6701; thence N. 60 W. 320 poles to a chestnut oak the North West corner of said No. 6701, and the North East corner of 6700; thence West with the line of No. 6700, 320 poles to a stake and pointers, the North West corner of No. 6700 and the North East corner of No. 6704; thence West 320 poles to a locust and black oak the sixty-one mile tree in the State line the

North East corner of No. 6684; thence with the State line and the line of No. 6684 S. 35 W. 140 poles to the public road; thence 50 degrees West with the State line and the line of No. 6684 one hundred poles to a stake; thence West with said State line and the line of No. 6684, 80 poles to a whits oak and locust the sixty-two mile tree in the State line and north east corner of No. 6685; thence with the State line and the line of No. 6685, 320 poles to a hickory the sixty-three mile tree in the State line, and the North East corner of No. 6690; thence with the line of No. 6690; and the State Line S. 30 W. 140 poles to a pine; thence S. 65 W. with the line of No. 6690 and the State line 170 poles to a white oak the sixty-four mile tree in the State line; thence with the line of No. 6690 and the State line West 60 poles to the Tennessee River; thence down the said river with its meanders to the beginning, containing 11780 acres, * * *.

1472 EXHIBIT "A" TO DEPOSITION OF A. C. WILLIAMS.

This Indenture made this the 18th day of April, A. D. 1903, by and between J. R. Thomas and his wife Josephine Thomas of the County of Haywood in the State of North Carolina, A. C. Avery and his wife Sallie Avery of the County of Burke in said State of North Carolina, William Patton and wife Sallie Patton of the County of Jackson in the State of North Carolina; and the said J. R. Thomas Guardian of William H. Thomas, Love Thomas, Mariah Thomas, De Witt Thomas and Bryan Thomas, infants under twenty one years of age and the children of William H. Thomas, Jr. deceased, residing in the county of Jackson in said State of North Carolina, the said J. R. Thomas, Guardian, as aforesaid, acting as such guardian in the execution of these presents underand by virtue of authority conferred on him by a decree and order of the Superior Court of said County of Jackson rendered by the Clerk of said Court on the 16th day of April 1903, in a certain special proceeding then pending before him, entitled, James R. Thomas, Guardian of William H. Thomas, Love Thomas, Mariah, De Witt Thomas, and Bryan Thomas, infants under twenty-one years of age, and children of W. H. Thomas Jr. deceased, Ex Parte, the said order and decree having been this day affirmed and approved by His Honor W. B. Council, a Judge of the Superior Court of North Carolina now holding the courts of the 16th Judicial District of said State, in which District the said County of Jackson is situate, parties of the first part and J. S. Bailey of the town of Waycross in the County of Ware in the State of Georgia, party of the second part:

Witnesseth: that the said parties of the first part for and in consideration of the sum of twenty nine thousand, Eight Hundred and fifty-one and 71/100 ($29,851.71) Dollars to them in hand paid, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, conveyed and confirmed and by these presents do give,

1473 grant, bargain, sell, convey and confirm unto the said J. S. Bailey, his heirs and assigns forever, a certain tract and parcel of land situate, lying and being in the Counties of Swain and

Graham in the said State of North Carolina, on both sides of the Tennessee River and bounded and more particularly described as follows: Beginning on a Black-Gum on which are old marks indicating a fallen Spruce as a corner on the South bank of the Tennessee River at the mouth of Slick Rock Creek and in the State line and about one pole North East of the corner of No. six Hundred and eleven (611) and runs with the State line South twenty-five (25) degrees East Two hundred and ninety three (293) poles to a Dogwood on which are old pointer marks indicating a fallen chestnut as a corner and supposed to be a corner of No. six hundred and eleven (611); thence South fifty-five (55) degrees west, crossing Tallassee trail at one hundred and Ninety-two (192) poles two hundred and eight (208) poles to an old Black Oak Corner, now down, still showing old marks; thence South ten (10) degrees West Seventy four (74) poles to a stake where an old Chestnut corner formerly stood; thence South twenty six (26) poles to a pine stump and old pointers; thence South forty seven (47) degrees West, forty-eight (48) poles to a white oak, old marked corner on the divide between Bear and Slick Rock Creeks; thence South eighteen (18) degrees West, one hundred and twenty-three (123) poles to three Chestnuts, old corner near top of Hangover Lead; thence South sixteen (16) degrees East Two hundred and fifty six (656) poles to a Chestnut on top of a ridge, an old corner; thence North sixty-five (65) degrees East two hundred and six (206) poles to a forked Black Oak near top of a ridge, an old corner; thence North eighty-eight (88) degrees East forty-six (46) poles to a Chestnut oak, an old corner; thence South fifty-five (55) degrees East crossing Bear Creek at one hundred and four poles and crossing left hand prong at one hundred and twenty poles and crossing the old Tallassee Trail at one hundred and eighty poles, and crossing Barkers Creek at three hundred and eighty four poles, in all six hundred and sixty five poles to a white oak in a cove, an old corner; thence North Seventy five (75) degrees East, crossing Deep Creek at two hundred and thirty-two poles, and crossing
1474 Tallassee Trail at three hundred and sixty-four poles in all four hundred and sixty poles to a Maple now down, and pointers; thence North eighteen (18) degrees, East, one hundred and seventeen poles to a spruce pine on a Rock Cliff; an old corner; thence North thirty-five (35) degrees West forty-five poles to a Chestnut Oak, an old corner on the bank of Cheoah River; thence down said river with its meanders four hundred and fifty-three poles to a leaning Black Gum on the south bank of said river and on the line of No. seventeen hundred and twenty-seven (1727); thence with the line of No. seventeen hundred and twenty-seven, North forty-five (45) degrees East, eighty six poles to a Chestnut Oak on a rock cliff, an old corner; thence with the line of No. 1727, North twenty (20) degrees West, crossing Robbinsville or Cheoah turnpike road at Eighty-six poles, crossing Meadow Branch at one hundred and forty-two poles in all two hundred and ninety five poles to a pine, the South West corner of No. 1728; thence North eighty seven (87) degrees East with the line of No. 1728, three hundred and four poles to a small hickory, the North West corner of No. 595 on the South

side of a ridge; thence South forty-five (45) degrees East, crossing Robbinsville or Cheoah Turnpike at fifty-four poles, one hundred poles to a beach, the beginning Corner of No. 1398; thence South Eighty three (83) degrees West, one hundred and thirty six (136) poles crossing the Robbinsville or Cheoah Turnpike at one hundred and thirteen poles to a Post Oak an old corner; thence South forty (40) degrees East, crossing said road at ten poles, crossing a branch at twenty poles, one hundred and twenty seven poles to a chestnut oak near the top of a mountain; thence North Eighty two (82) degrees East one hundred and seventy poles to a small hickory on the line of No. 595; thence with the line of No. 595 South, forty-five East one hundred and twenty poles to a chestnut oak; the South west corner of No. 595; thence North Seventy two (72) degrees East with the line of No. 595; four hundred poles to a small white oak, the South East corner of No. 595 and a corner of the Whitaker tract; thence west with the line of the Whitaker tract and Rhymer tracts five hundred and seventy poles to the line of No. 1728, thence with the line
of No. 1728 North twenty (20) degrees West two hundred
1475 and seventy poles to a Maple on the south bank of the Tennessee River; thence up the Tennessee River with its meanders about one thousand five hundred and fifty-nine (1559) poles to a hickory the south East corner of No. 6703 in Swain County; thence North with the line of said last mentioned number (6703) North twenty (20) degrees East four hundred and forty poles to a Locust on the east side of the Luellen Branch the North West corner of No. 6702; thence with the line of No. 6702 South four hundred and thirty two poles to a Chestnut Oak on the north bank of Tennessee River; thence up said river with its meanders about four hundred and fifty two poles to a fallen White Oak marked as a corner, the beginning corner of No. 6702, in Swain County; thence North with the line of No. 6702 one hundred and forty poles to a pine stump; thence with the line of No. 6702 North twenty (20) degrees East crossing a branch at seventy-six poles, one hundred and eighty poles to a chestnut on a rocky mountain side, the North East corner of No. 6702; thence West with the line of No. 6702 crossing a branch at sixty six poles three hundred and twenty poles to a Locust, the North West Corner of No. 6702, and the North-East Corner of No. 6703; thence with the line of No. 6703 West two hundred and seventy four poles to a white oak and Service near a small branch; thence South twenty (20) degrees west eighty poles to a stake, the North-East corner of No. 6708; thence with the line of No. 6708, North sixty (60) degrees West three hundred and Eighty poles to a Chestnut on the East side of Twenty Mile Creek; thence South twenty (20) degrees west six hundred and thirty five poles to a white oak and maple on the North bank of Tennessee River, south east corner of No. 6701; thence North with the line of No. 6701, three hundred and ninety poles to a stake, the North East Corner of No. 6701; thence North sixty (60) degrees West three hundred and twenty poles to a Chestnut Oak, the North West Corner of said No. 6701; and the North East Corner of No. 6700; thence West with the line of No. 6700 three hundred and twenty poles to a stake and pointers, the

North-West Corner of No. 6700 and the North East Corner of No. 6704; thence West three hundred and twenty poles to a Locust and Black Oak the sixty one mile tree in the State line, the North
1476 East corner of No. 6684; thence with the State line and the line of No. 6684 South thirty-five West one hundred and forty poles to the Public Road; thence South fifty (50) degrees West with the State line and the line of No. 6684 one hundred poles to a stake; thence West with said State line and the line of No. 6684 eighty poles to a White Oak and Locust the sixty two Mile tree in the State line and North East corner of No. 6685; thence with the State line and the line of No. 6685 three hundred and twenty poles to a hickory, the sixty-three mile tree in the State line and North-East corner of No. 6690; thence with the line of No. 6690, and the State line South thirty (30) degrees West one hundred and forty poles to a pine; thence South sixty-five (65) degrees West with the line of No. 6690 and the State line one hundred and seventy poles to a white oak, the sixty-four mile tree in State line; thence with the line of No. 6690 and the State line west sixty poles to the Tennessee River; thence down said river with its meanders to the beginning, Containing eleven thousand, seven hundred and eighty (11,780) acres exclusive of the exceptions hereinafter contained, excepting however, nine hundred and twenty four acres lying within the above described boundary and held adversely to the parties of the first part by certain persons having superior titles to theirs and consisting of several tracts described or designated as follows, to wit: A tract generally known as the Andy Williams lot in Graham County, Containing one hundred acres.

Two adjoining tracts known as the Rhymer tracts containing together two hundred acres being in the said County of Graham.

Tract No. 545 in Graham County containing one hundred acres.

Tract No. 25 in Swain County containing one hundred and thirty-five acres.

Tract No. 26 in Swain County containing fifty eight acres.

Tract No. 27 in Swain County containing fifty eight acres.

That portion of tract No. 28 in Swain County lying within the boundary hereinbefore described there being about twenty-three acres of said tract within said boundary.

Tract No. 29 in Swain County containing fifty acres.

1477 Two adjoining tracts known as the Roby tracts lying in Swain County containing two hundred acres, and the lines and boundaries of the above described large boundary of land as well as the boundary line of the lands above excepted are fully shown in a certain Map made by F. M. Lovingood, Surveyor at the request of said J. R. Thomas and J. S. Bailey and filed in the office of Clerk of the Superior Court of Jackson County as a part of the petition in the said special proceeding had in the County of Jackson, State of North Carolina entitled, James R. Thomas Guardian of Wm. H. Thomas, Love Thomas, Mariah Thomas, DeWitt Thomas, Bryan Thomas, infants under twenty one years of age and the children of W. H. Thomas, Jr., deceased, Ex Parte, and for a clear understand-

ing of the location of said lands, and the lands excepted reference is hereby made to said map filed as aforesaid.

To have and to hold the said lands and premises unto the said J. S. Bailey, his heirs and assigns to his and their only use and behoof forever. And the said J. R. Thomas in pursuance to a contract heretofore made by him with said J. S. Bailey based on a Valuable Consideration hereby Covenants with the said J. S. Bailey his heirs and assigns that he, the said *said* J. R. Thomas is lawfully seized in fee simple of one undivided third of said land and has full right to convey the same, and that the said Sallie L. Avery is lawfully seized of an undivided third of said land and has full right to convey the same and that the said Sallie Patton is lawfully seized of an undivided eighteenth of said land and has the right to convey the same, and that William H. Thomas, Love Thomas, Mariah Thomas, DeWit Thomas and Bryan Thomas are lawfully seized of an undivided five-eighteenths of said land and that he as their Guardian has full right and power to sell and convey their said undivided five-eighteenths interest in said land and has hereby conveyed the same, and he further Covenants that said land is unincumbered except as to minerals and mining privileges, claimed adversely to the parties of the first part, and as to such minerals and mining privileges no part of this warranty shall apply and he further Covenants that he will and his heirs, executors and administrators shall forever warrant and defend the said lands and
1478 premises and the title thereto (except as to said mineral and mining privileges) not only as to the share hereby conveyed by him in his own right but as to the entire land and all the interests therein herein conveyed or intended to be conveyed, against the lawful claims of all persons whomsoever.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals this the said 18th day of April A. D. 1903.

JAS. R. THOMAS. [SEAL.]
JOSEPHINE S. THOMAS. [SEAL.]
A. C. AVERY. [SEAL.]
SALLIE L. AVERY. [SEAL.]
SALLIE PATTON. [SEAL.]
W. T. PATTON. [SEAL.]
JAS. R. THOMAS, [SEAL.]
Guardian of William H. Thomas, Love Thomas, Mariah Thomas, Dewit Thomas, and Bryan Thomas.

Attest as to J. R. Thomas, Guardian:
J. S. ADAMS.

STATE OF NORTH CAROLINA,
County of Haywood:

I, Wm. T. Blaylock Notary Public of Haywood County, do hereby certify that J. R. Thomas and wife Josephine Thomas and J. R. Thomas Guardian of William H. Thomas, Love Thomas, Mariah Thomas DeWit Thomas and Bryan Thomas, personally appeared

before me this day and acknowledged the due execution by them of the foregoing deed, and the said Josephine Thomas, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the said deed, doth state that she signed and executed the same freely and voluntarily, without fear, compulsion or undue influence of her said husband or any other person and that she doth still Voluntarily assent thereto.

1479 Witness my hand and Notarial Seal this the 18th day of April, A. D. 1903.

[L. S.] WM. T. BLAYLOCK,
Notary Public.

STATE OF NORTH CAROLINA,
County of Buncombe:

I, Frederick W. Thomas, Notary Public for County of Buncombe, State of North Carolina, do hereby certify that A. C. Avery and wife Sallie L. Avery personally appeared before me this day and acknowledged the due execution by them of the foregoing Deed, and the said Sallie L. Avery being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed and executed the same freely and voluntarily without fear, compulsion, or undue influence of her said husband or any other person and that she doth still Voluntarily assent thereto.

Witness my hand and official seal this the 18th day of April, A. D. 1903.

[L. S.] FREDERICK W. THOMAS,
Notary Public.

STATE OF NORTH CAROLINA,
County of Jackson:

I, John R. Green, a Justice of the Peace in and for the County of Jackson do hereby certify that William Patton and his wife, Sallie Patton personally appeared before me this day and acknowledged the due execution by them of the foregoing deed, and the said Sallie Patton being privately examined separate and apart from her said husband touching her voluntary execution of the same, doth state that she signed and executed the same freely and voluntarily, without fear, compulsion, or undue influence of her said husband or any other person, and that she doth still voluntarily assent thereto.

1480 Witness my hand and private seal this the 20th day of April, A. D. 1903.

JOHN R. GREEN, [SEAL.]
Justice of the Peace in and for Jackson County, North Carolina.

NORTH CAROLINA,
Jackson County:

I hereby certify that John R. Green was at the time of signing the foregoing certificate a Justice of the peace in and for the County of Jackson and State of North Carolina, and his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and Seal of Office this 20th day of April, A. D. 1903.

[L. S.]

V. F. BROWN,
Clerk Superior Court,
Jackson County, N. C.

NORTH CAROLINA,
Buncombe County:

I, Alfred S. Burnard, Notary Public in and for the County of Buncombe and State of North Carolina, do hereby certify that on this the 23rd day of April, 1903, personally appeared before me James Thomas, Guardian of William H. Thomas, Love Thomas, Mariah Thomas, De Wit Thomas and Bryan Thomas and acknowledged the due execution by him as such Guardian of the foregoing and annexed deed.

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal on this the day and year last above written.

[L. S.]

ALF. S. BURNARD,
Notary Public,
Buncombe County, N. C.

1481 STATE OF NORTH CAROLINA,
Swain County:

The foregoing Certificate of William T. Blaylock, a Notary Public of Haywood County and State of North Carolina, with his Notarial Seal attached; and the foregoing Certificate of Frederick W. Thomas, a Notary Public of the County of Buncombe and State of North Carolina with his Notarial Seal attached, and the foregoing Certificate of John R. Green, a Justice of the Peace of Jackson County and the State of North Carolina, with his private Seal attached, and the foregoing Certificate of V. F. Brown, Clerk of the Superior Court of Jackson County, North Carolina, with his official Seal attached, and the foregoing Certificate of Alfred S. Burnard a Notary Public of the County of Buncombe and the State of North Carolina, with his Notarial Seal attached are all and every of them adjudged to be correct, in due form, and according to law, and the foregoing Deed is adjudged to be duly proven.

Therefore, let the foregoing deed and said Certificates and this Certificate be registered.

This the 5th day of May, 1903.

A. J. HALL,
Clerk of the Superior Court of
Swain County, North Carolina.

Filed for registration May 5th, 1903, at 9 A. M. and registered May 5th, 1903, at 2 P. M. in the office of Register of Deeds for Swain County, in Book "X" page 257, et seq.

R. W. WRIGHT,
Register of Deeds,
Swain County, N. C.

STATE OF NORTH CAROLINA,
Graham County:

The foregoing Certificate of William T. Blalack, a Notary Public of Haywood County and State of North Carolina, with his
1482 Notarial Seal attached; and the foregoing Certificate of Frederick W. Thomas, a Notary Public of the County of Buncombe and State of North Carolina with his Notarial Seal attached; and the foregoing Certificate of John R. Green a Justice of the Peace of Jackson County and the State of North Carolina, with his private seal attached; and the foregoing Certificate of V. F. Brown, Clerk of the Superior Court of Jackson County, North Carolina, with his official seal attached; and the foregoing Certificate of Alfred S. Burnard, a Notary Public of the County of Buncombe and State of North Carolina, with his Notarial Seal attached are all and every of them adjudged to be correct, in due form and according to law, and the foregoing deed is adjudged to be duly proven.

Therefore let the foregoing deed and said Certificates and this Certificate be registered.

This the 7th day of May, 1903.

R. V. McELROY,
Clerk of the Superior Court of
Graham County, N. C.

The foregoing Deed of Conveyance was this day duly registered in the office of Register of Deeds for Graham County in Book "L" of Deeds on page 342.

Witness my hand this the 7th day of May, 1903.

ROBT. B. SLAUGHTER.

NORTH CAROLINA,
Graham County:

I, Robt. B. Slaughter, Register of Deeds, for Graham County, N. C., do hereby Certify that the foregoing instrument is a true and correct copy of a deed from James R. Thomas, et als. to J. S. Bailey, together with all the Certificates of acknowledgements and probates as it appeared of record in my office in Book "L" on page 142.

Witness my hand and Official Seal this the 3rd day of December, 1910.

[SEAL.] ROBT. B. SLAUGHTER,
Register of Deeds, Graham County, N. C.

1483 (Endorsed:) Deed. Jas. R. Thomas et als. to J. S. Bailey. Certified Copy. Fee $5. 25/100 paid by R. M. Grant.

End of Ex. A. to Dep. of A. C. Williams.

1484 ROBERT GRANT, next witness, first duly sworn deposed and said:

Examined by Gen. CATES:

Q. 1. Where do you live?
A. Swain County, North Carolina.
Q. 2. How old are you?
A. 37 years.
Q. 3. How long have you lived in Swain County?
A. Going on four years.
Q. 4. Do you know D. B. Burns?
A. Yes, sir.
Q. 5. Do you know where he is now?
A. No, sir.
Q. 6. Did you ever assist him in making a survey?
A. Yes, sir.
Q. 7. Before living in Swain County did you live in Graham County?
A. Yes, sir.
Q. 8. Are you pretty familiar with the territory there?
A. Yes, sir, very well.
Q. 9. You said you assisted Burns in making a survey?
A. Yes, sir.
Q. 10. When?
A. I believe last winter, the fore part of last winter.
Q. 11. Who was with him?
A. Two of his brothers, D. B. and another one of those Burns boys, three of the Burns.
Q. 12. Was the old gentleman along?
A. No, sir.
Q. 13. Was a man named Baker there?
A. Baker was not in this bunch, no.
Q. 14. Where did you commence that?
A. We began on the other side of Cheoee river running backwards.

1485 Q. 15. Which side?
A. On the Robbinsville road.
Q. 16. On the east or west side of Cheoee river?
A. East side.
Q. 17. Which way did you run?
A. To the river there.
Q. 18. To the Cheoee river?
A. Yes, and crossed Cheoee and went on up the line until we came to the old Tallassee trail and turned back towards Slick Rock.
Q. 19. Where did you cross Hang Over lead?
A. We run near Hang Over, or on the mountain we called that and turned down the lead.
Q. 20. About how far from the river did you come to Hang Over lead?
A. From Cheoee you mean?
Q. 22. No, from the Little Tennessee. How far from the Little Tennessee until you struck Hang Over lead?

A. I don't know exactly, but something like, I would say, two miles, seems to me.

Q. 23. Then did you run down that lead toward the river?

A. Yes, well, we were up on top all the time, just under the top a little ways in one place and then we went to the river, one or two places.

Q. 24. Where did you leave the main lead and run down to the river? Where did you strike the river at?

A. At Slick Rock Creek,—just above.

Q. 25. Just above the mouth of Slick Rock?

A. Yes sir.

Q. 26. Coming down from main Slick Rock did you run down the lead that ended at the Tennessee river just East of the mouth of Slick Rock?

A. Yes, just before it got to the river it was a bluff, it didn't show up to be a ridge, not so much so, it is a kind of a bluff, river bluff, it ran up straight to strike the ridge above.

Q. 27. How close did you end that line to the mouth of Slick Rock?

1486 A. Just a little ways, right at the mouth of Slick Rock.

Q. 28. As much as a chain or pole, what is your idea?

A. The best I remember it would be about a chain, no, it would not be that far. I don't think it would be a chain.

Q. 29. Getting it down to feet how many feet do you think it was above the mouth?

A. It would be I expect 30 or 40 feet.

Q. 30. What official position have you held in North Carolina if any?

A. Nothing more than road overseer.

Q. 31. Where?

A. In Graham County.

Q. 32. What was your territory?

A. My territory was,—I cannot just say what the road order called for now, but I was authorized when I went in on the other side not to go further than Slick Rock Gap, that was the lead we came down, not to go further back on Slick Rock because it did not belong to my territory.

Q. 33. You were not to go west of Slick Rock Gap?

A. No sir.

Q. 34. Then the territory between Hang Over and Cheoee river was under your jurisdiction as overseer?

A. Yes sir.

Q. 35. Any territory on the east side of Cheoee?

A. Yes sir.

Q. 36. Who did you get instructions from?

A. All the instructions I had were from the Orr people living in the mountains, they said it did not belong to me. I don't know whether my road order said to stop at the state line or Slick Rock Gap or what, but they said they had not any man worked men the other side of the gap and said you don't have to go there to get them.

Q. 37. Did you have a written order?

The State of North Carolina objects to statements of the Orrs.

Q. 38. Do you know people named Orr there?
1487 A. Yes sir.
Q. 39. What are their names?
A. David and Andy and several of them.
Q. 40. Did any of them start to build a road through Slick Rock Gap?

The State of North Carolina objects to the action of the Orrs as irrelevant and immaterial.

A. Old man Orr started to build a road to Tennessee to get his stock out, and his honey and he had no road and when he got across the Slick Rock Gap the Tennessee people made him stop and he said they would not let him go further and so he said it was useless for him to go to the gap. They said they would stop him at the gap.

The State of North Carolina makes the same objection about the Tennessee people as about the Orrs.

Q. 41. Which Orr was that?
A. David Orr.
Q. 42. How old is he?
A. He must be 65 or 70.
Q. 43. Does he live on the Thomas land?
A. I suppose so. No he lives on a little tract of his own joining it.

Cross-examination.

By Mr. SONDLEY:

Q. 44. When were you road overseer?
A. I don't know the date. About eight or ten years ago.

And further saith not.

ROBERT GRANT.

Sworn to and subscribed before me this the 29th day of Nov. 1910.

S. E. CLEAGE,
Clerk Supreme Court.

Two days and — miles.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Ct. of Tenn.

1488 JOHN W. STRATTON, next witness, first duly sworn, deposed and said:

Examined by Maj. MCCROSKEY.

Q. 1. How old are you?
A. I reckon if I live till the 11th of next March I will be 83.
Q. 2. Where were you born?
A. In Monroe County, up on the Tennessee river.

Q. 3. Did you ever live on or near the state line between North Carolina and Tennessee?

A. Yes, we lived in two hundred yards of the state line for ten years.

Q. 4. How old were you when you lived there?

A. We went there in the year 1840, I was about 16 or 17 years old.

Q. 5. Now describe the locality so we will understand?

A. Of the country?

Q. 6. Of where you lived on the state line?

A. We lived at the head of the north prong of the Tellico river, right at the head of it. We had a stock farm there ten years.

Q. 7. When you went there in 1840 were there any other people living in that section of country?

A. None at all sir.

Q. 8. How far away were your nearest neighbors?

A. About ten or 12 miles.

Q. 9. Where were they living?

A. In White Oak Flats.

Q. 10. In Tennessee or North Carolina?

A. In Tennessee.

Q. 11. Please tell us now how far and in what direction is the place where your father and you lived for ten years from Laurel Top?

A. It is about six miles.

Q. 12. What direction from Laurel Top?

A. Well it is southeast.—that we lived?

Q. 13. Yes.

A. Well where we lived would be northwest.

1489 Q. 14. Did your father die at this place on the state line?

A. My grand-father died there.

Q. 15. State whether or not your grand-father was buried there?

A. Yes, right on the line, what they said was the line at that time.

Q. 16. Why was he buried on the line?

A. He was a North Carolinian and before he died he went and picked out the place and we went and buried him right where he picked out the place.

Q. 17. Is his grave in North Carolina or Tennessee or both?

A. It is in both, rather from the way he is buried they said, I wasn't there. When they were running these last lines they said they ran right across his grave, sorter lengthwise across.

Q. 18. Your grand-father wanted to be buried there?

A. Yes, his request.

Q. 19. Are you familiar with that section of country around what is called the state Ridge and Laurel Top?

A. I ought to be I have hunted and trapped in that country for 40 or 50 years.

Q. 20. Please explain why it is called Laurel Top?

A. The top is covered with what we call muck *howlow* ivy, and

laurel, no big timber on it and there was a bear trail through it and we trapped there and caught wolves and bears for years.

Q. 21. How does the ridge lead off from Laurel Top?

A. Part of them on the head of Tellico and part on the Santeelah and some on Buffalo.

Q. 22. How does the State ridge run?

A. From the Laurel Top it runs a little south of west, down out here (indicating) and keeps pretty high until you get way here, past the gap, and then it turns down pretty steep towards the Tellico Rover.

Q. 23. Where does it terminate?

A. I never was right at the point of it; I have been down as far as the trail went that came through the fork of the river, but never right where it ran into the river.

Q. 24. Have you been in sight of the river on the ridge?

1490 A. Yes sir.

Q. 25. Do you know the state ridge stops at the river?

A. Yes sir.

Q. 26. Where is Mitchell Lick?

A. They set right off "fernint" this gap where it makes a turn around the head of the middle prong of Tellico.

Q. 27. Have you ever been down in Mitchell Lick?

A. Yes, all over the Mitchell bald.

Q. 28. How far beyond the continuation, beyond Mitchell Lick have you been?

A. From Hanging Dog Creek, from Murphy, and clear around the State line.

Q. 29. You have been clear around the headwaters of Tellico river, or only part of the way around?

A. Yes, I have been clear around it,—clear around to Coker Creek.

Q. 30. Following the ridge all the way round?

A. Yes sir.

Q. 31. From Laurel Top?

A. From Laurel Top over Waucheesa Bald.

Q. 32. Is that a well defined ridge one can follow well?

A. It can be run through with horses.

Q. 33. Can you follow it woth horses on top of the mountain?

A. Yes sir.

Q. 34. Around to the head waters of Tellico River?

A. Yes, there is one pretty big ball and some smaller ones in places along.

Q. 35. Does that make it difficult passing around or not?

A. Not a great deal, no.

Q. 36. Did you ever know or hear of any one stating about the location of the State line about the head waters of Tellico?

A. Yes, Levi Mashburn.

Q. 37. Who is he?

A. One of the chain bearers he said.

Q. 38. How did you know him?

A. From a boy, he helped us clean up that meadow.

Q. 39. So when you moved out to the Stratton Meadow
1491 Levi Mashburn went with you?

A. He came and worked with us often.

Q. 40. What did he say about being chain bearer?

A. At night he would be talking about the trip they made. He said when they got on top of Laurel Top the fog came on thick and said they ran on and ran past the gap and down that state ridge, as they called it, until they got under the fog and saw they were wrong and he said they just stopped there and went right across to the top again, across the head of the stream there. That is what he said often about it.

Q. 41. State whether or not he made these statements while you were living there near the state line?

A. Yes, up at the head of the river.

Q. 42. Did he say anything at the time of these conversations about where the Commissioners, and whether they sent any one back to mark out the line?

A. If he did I don't recollect it.

Q. 43. Did your father enter any lands in North Carolina?

A. Yes sir.

Q. 44. About how much?

A. He entered about 600 or 700 acres.

Q. 45. In 100 acre tracts?

A. Yes sir.

Q. 46. So he had six or seven of them in all?

A. Yes.

Q. 47. One hundred acres in each of them?

A. Yes sir.

Q. 48. Can you tell me where those entiries were located?

A. Two of them on the North Carolina side right against where we first commenced clearing at the head of the north prong of Tellico river.

Q. 49. The head of what creek is that in North Carolina?

A. On the North Carolina side, the Santeelah.

Q. 50. So then it would be at the head of the Santeelah?

A. Yes, one prong of it.

Q. 51. Where were the next entries?

1492 A. At what was called Mitchell Lick, right "fernent" this bend where they got lost.

Q. 52. Where was that Mitchell Lick?

A. It was on what they called the North Carolina side then and I reckon it is yet.

Q. 53. Was there any spring or water at that place or not?

A. None on what we entered. Only a spring that flowed into Snow Bird or Buffalo.

Q. 54. Where did that spring empty?

A. Into North Carolina.

Mr. DAVIDSON: The State of North Carolina objects to all the testimony with reference to alleged entries and their location on the ground that if such entries are located they could only be proved by

the production of the entry and location and surveys and it is not competent to prove it by oral declarations of *of* the witness in this manner.

Q. 55. Where was the next entry after that?

A. Towards the Bob Bald it is now called; and one down on Santeelah where old man Seward lived and died. I cleaned that up myself when I was a young man.

Q. 56. Who surveyed this entry at Mitchell Lick?

A. Pearcy.

Q. 57. Who was he?

A. A surveyor in North Carolina.—J. W. Pearcy.

Q. 58. A land surveyor?

A. Yes sir.

Q. 59. Were you along when it was surveyed?

A. I was along on the one at Mitchell Lick. I started to help enter that and killed a couple of deer and had to bring them back and before I got back they had made the entry and I met them coming back.

Q. 60. What did Pearcy say about the state line at that time?

1493 A. He would not run anything only just to the top along.

Q. 61. What do you mean by the top?

A. The top of the divide, the main mountain.

Q. 62. The top of the divide between Tellico river and the waters of North Carolina on the other side?

A. Yes, Snow Bird, Santeelah and Buffalo on the other side.

Q. 63. State whether or not Pearcy claimed this was the State line?

A. He said it was.

Q. 64. The divide waters was the state line?

A. Yes sir.

Mr. Posey: The State of North Carolina objects to the testimony because not competent what Pearcy said about the state line; and because leading.

Q. 65. Is Pearcy living or dead?

A. Dead I understand.

Q. 66. Did you ever see the marks on that Mitchell Lick?

A. Yes I have seen the corners they put up.

Q. 67. How is that located with reference to Laurel Top?

A. It is south of the Laurel Top.

Q. 68. Was it up the side of Laurel Top or down in the gap?

A. In the gap, just to the left of the gap.

Q. 69. If the state ridge was really the line between North Carolina and Tennessee would that be in North Carolina?

A. Which?

Q. 70. That survey?

A. Yes if the State ridge was the line.

Q. 71. If the line made the dividing waters, would it still be in North Carolina?

A. Yes that entry would.

Q. 72. If the land on this 100 acre survey was beyond the head waters, it would be in North Carolina?

A. Oh yes the State ridge from Laurel Top runs straight
1494 here (indicating) and that 100 acres is over here at the top south of the top.

Q. 73. What name does that place go by where you- father lived ten years?

A. Stratton Meadows.

Q. 74. State whether or not there is a low gap there in the mountain?

A. Yes and the Santeelah comes in 100 yards of the gap and our spring was 200 yards on the Tennessee side.

Q. 75. State whether or not the ground is level there?

A. It was rolling, pretty good meadows.

Q. 76. How far is Stratton Bald from Stratton Meadows?

A. We call it five miles.

Q. 77. How did it happen to be called Stratton Bald?

A. My brother lived under there; he entered a lot there.

Q. 78. On which side?

A. The North Carolina side. We gave him one we entered and he entered two more joining it and he lived there until he bought where Hudson lived under the Hang Over.

Q. 79. Is that the way it took the name of Stratton Bald?

A. That is what — took the name from; he lived right under it.

Q. 80. State whether or not you have been from Stratton Bald to Stratton Meadows many times?

A. Oh often, I kept stock there 40 or 50 years; before the war and since.

Q. 81. Between Stratton Bald and Stratton Meadows was there any dispute about the State line?

A. Never that I heard of.

Q. 82. Was there any dispute about the line at Stratton Meadows where your father lived?

A. No, not to my knowledge?

Q. 83. This is a low gap at Stratton Meadows and Santeelah runs into North Carolina and the head waters of Tellico on the other side?

A. Yes sir.

Q. 84. You can see from one to the other?

A. Yes sir.

Q. 85. The land can all be cultivated there?

1495 A. Yes, we did.

Q. 86. Do you know anything about the location of the line between the Stratton Meadows towards Tennessee river?

A. I have been along it. I kept cattle there on the Stratton Bald and had to go to salt them.

Q. 87. Were you along the Hang Over?

A. I have been there many times.

Q. 88. And on Fodder Stack?

A. I have been all over it.

Q. 89. In your younger days where did you learn the state to be in the Slick Rock Country?

The State of North Carolina objects to the witness' understanding.

A. My brother and others that lived on the North Carolina side told me it ran up that ridge. They called it sometimes the Bald Rock and sometimes the Hang Over. My brother lived over at the right of it.

The State of North Carolina objects to declarations of the witness' brother as to where the state line ran at Hang Over.

Q. 90. Is your brother living or dead?
A. He died during the war.
Q. 91. Did other persons ever tell you about where the line is located?
A. I don't know as anybody but Hoyt, he ran some land there and he told me he ran from the Smoky Mountain across and ran up to the Bald Rock.
Q. 92. Who was he?
A. A surveyor and the best ever in that country.

The State of North Carolina objects to statements — Hoyt.

Q. 93. How long ago has it been since he was there?
A. 18 *or* 20 years.
Q. 94. State whether he undertook to locate the state line at that time?
A. Yes, that was his business.
Q. 95. What did he say about the line?

The State of North Carolina objects to the statement of Hoyt as being hearsay and made post litem motam.

1496 A. He said from the way he ran he was compelled to put it where it crossed the river for it ran up that lead of Bald Rock or Hang Over.
Q. 96. What lead?
A. Between Bear Creek and Slick Rock.
Q. 97. I will ask you to refresh your memory if it was not in the seventies when Hoyt was there?
A. It might have been I never paid much attention.
Q. 98. State whether or not Hoyt was an old man at that time?
A. Very old.
Q. 99. Do you know whether he is living now?
A. He is dead.
Q. 100. State whether or not this survey of Hoyt was made before you ever heard of any controversy about the state line on Slick Rock Creek?
A. Yes I never heard of any complaint until after Belding got in there.
Q. 101. What office have you held in Monroe County?
A. Deputy Sheriff 10 or 12 years and I have been justice of the peace 22 years in Monroe County.
Q. 102. State whether or not you have a map of that section of country at the head waters of Tellico?

A. I have a map of the whole of the head waters of Tellico.
Q. 103. Who gave it to you?
A. John B. Tipton.
Q. 104. Who was he?
A. A surveyor and surveyed out that country.
Q. 105. Is he the surveyor that surveyed the Ocoee land district?
A. I think so.
Q. 106. That is your understanding?
A. Yes sir.
Q. 107. He is the man that gave it to you?
A. He gave it to my father.

The State of North Carolina objects to the leading form of the question.

A. They asked me to bring it here and I forgot it.

1497 Q. 108. How long since that map was furnished to your father by Tipton?

A. While he lived there. My father was a partner in that big entry there.
Q. 109. How long ago has that been?
A. We lived there in the year 1850. It must have been some sixty odd years ago.
Q. 110. So that this map has been in your possession and that of your father for sixty odd years?
A. Yes sir.
Q. 111. Have you that map?
A. I was notified to bring it and forgot it. I fixed it to bring and forgot it. I can send it.
Q. 112. Will you file it as an Exhibit to your deposition,—Exhibit "A"?
A. Yes sir.

(Here insert map Exhibit "A" to deposition of John W. Stratton, marked page 1497*a*.)

Cross-examination.

By Mr. POSEY:

Q. 113. You know where Laurel Top is?
A. Yes sir.
Q. 114. On the State line?
A. They always claimed it was on the state line.
Q. 115. What ridge leads straight in a south direction from Laurel Top towards Tellico river?
A. That is what they call the State ridge.
Q. 116. Does it go to the river?
A. I suppose so. I was just on the trail pretty well to the river, to where it turns to go down Tellico River.
Q. 117. You have looked across that country?
A. Yes sir.
Q. 118. Don't you know right opposite where this depression that the river goes through, another ridge makes up in the direction of Unaka road and goes on?
1498 A. I never noticed.
Q. 119. Called by some the Jenks' ridge. There is a depression and just opposite the end of the State ridge the other ridge came up from the river and goes toward Unaka road?
A. The ridge would but I don't know the name of the ridge.
Q. 120. There is a ridge there, whether by that name or not?
A. Yes sir.
Q. 121. That man told you about the fog on it?
A. Yes sir.
Q. 122. And being on this leading ridge they kept right on?
A. Yes sir.
Q. 123. That ridge would lead them on wouldn't it? It is the main leading ridge?
A. No it is not.
Q. 124. Isn't it the main leading ridge in a southwest direction?
A. No sir.
Q. 125. What is?
A. The State ridge runs down here (indicating) and here is the gap (indicating), and the main ridge goes on this way (indicating).
Q. 126. They were not on that ridge when they were at Laurel Top?
A. Yes, right on that ridge.
Q. 127. To get over the State ridge and on to that ridge wouldn't you go through a heavy depression and up more next to the Mitchell Lick?
A. My recollection is that the water runs both ways, I have been there often.
Q. 128. While you were on the main State ridge, or the State ridge, to go this other way around there you would turn off at an angle from the State ridge?
A. Yes you drop down.
Q. 129. Off the mountain?

A. Yes but the State ridge runs over here (indicating) and pitches to the river.

Q. 130. I know, you needn't to argue that, but when you
1499 drop off the State ridge you drop considerable distance to start on this other,—this divide?

A. I expect a quarter of a mile off the hillside. A man passing there has to look close to see where it makes off.

Q. 131. He would go right on the State ridge if he didn't look?

A. Yes sir.

Q. 132. What did they do, did they say when they found their mistake?

A. He said the fog come on them and they ran there until they got under the fog and saw they were wrong and went back and crossed to the top of the main mountain.

Q. 133. What did he say they did then?

A. Said they kept on.

Q. 134. Did they survey around there did he say?

A. No, he said they said they were just going to plat that out,—that bend there.

Q. 135. Had they marked this line down State ridge?

A. He said they marked a piece and quit.

Q. 136. Did they mark that around there?

A. Yes after they struck the top again towards Hiawassee river.

Q. 137. Did he say they made any marks in the bend there?

A. No he said they never went back.

Q. 138. They didn't survey it at all?

A. No not that part of it.

Q. 139. Did he tell you how they came to mark some trees west of Tellico River and that Jenks' ridge?

A. No he never said a word.

Q. 140. Did he tell you how they came to measure out 101 miles to the Unaka turnpike?

A. I don't recollect that he did.

Q. 141. From Laurel Top to the Unaka turnpike around this loop, we will call it, is considerable distance further than to go the State ridge?

A. Yes, I guess it would cut off a right smart.

1500 Q. 142. Is it seven or eight miles further?

A. I think so.

Q. 143. They told you they made a mistake but said they didn't survey the other at all?

A. He said they just saw they were wrong and just quit and crossed across the head of the stream to the top and went on and said they aimed to plat that out.

Q. 144. They did cross the head of the stream and right on to the Unaka road?

A. Yes sir.

Q. 145. Going west of the stream they went up this Jenks' ridge to the top of it along that top, and he said they went on after they crossed Tellico, instead of going around they went up the Jenks' ridge to the top?

A. He didn't say that.

Q. 146. They just crossed the river and to the top?

A. Just crossed the small stream to the top and set in?

Q. 147. Did he say the direction they were going? Was it the same direction they had been going?

A. Yes sir.

Q. 148. And had been going when they came from Laurel Top?

A. Yes sir.

Q. 149. These lands you were talking about Pearcy surveying, they were in disputed territory?

A. No sir.

Q. 150. There was no dispute there?

A. Not a bit.

Q. 151. They were in North Carolina and you and Pearcy made some surveys joining the state line.

A. Three, he ran up to the top.

Q. 152. To the State ridge this same ridge we are talking about. He made it to the top of this State ridge from the North Carolina side?

A. No, right up to where they claimed the state line ran,
1501 the old North Carolina and Tennessee line.

Q. 153. Who was this man Hoyt?

A. A surveyor these companies had.

Q. 154. Who?

A. I think Hibbard had him here.

Q. 155. Some of the parties claiming this land to be in Tennessee?

A. Well they claimed all that country between here and the North Carolina line.

Q. 156. Claiming the Tennessee side of it?

A. Yes sir.

Q. 157. He was employed by them to go there and survey?

A. Yes sir.

Q. 158. Where did he live?

A. I think in Baltimore, but at that time in Bradley County, and he died there.

Q. 159. In Bradley County Tennessee?

A. I think so.

Q. 160. How long have you known that as the State ridge?

A. Sixty years or over.

Q. 161. It has been known as the State ridge 60 years or more?

A. It was claimed to be that, you know that is where they said they made their mistake, but I never heard it called the state line any further than they ran down there.

Q. 162. It was as far as they went and marked called the state line?

A. They said they did it in running the state line and found they were wrong and crossed the stream.

Q. 163. And just let that loop alone?

A. Yes sir.

Q. 164. What was your father's name?

A. John Stratton.

Q. 165. You say Hoyt was employed by Hibbard and some of those people to survey their land?

A. Yes sir.

1502 Q. 166. Is Hibbard the man that had the law suit with Belding about the Slick Rock country?

A. I don't know. I heard some disturbance since Belding came there.

Q. 167. The suit you understood was between Belding and Hibbard about it?

A. Yes sir.

Q. 168. And that is the same party this man was surveying for?

A. Yes, Hibbard was.

Q. 169. That same land is in there, that is what he was surveying?

A. Yes sir.

Q. 170. You say Tipton and your father were partners in a big entry there?

A. Yes sir. On the north prong of the river running pretty well up to the Hangover.

Q. 171. That is how that map came to be made?

A. Yes sir.

Q. 172. They just entered that whole country there?

A. Yes sir.

Q. 173. This map you are going to file is a map of that big entry of theirs?

A. Yes and the whole country clear up on Slick Rock.

Re-examination:

Q. 174. I want to ask you more about that entry that Pearcy made in North Carolina for your father at Mitchell Lick. Please explain more so that we can understand just how the lines of that ran with reference to the top of State ridge or Laurel Top?

A. He just ran it, 100 acres just up to the top of that mountain.

Q. 175. You mean at the top of Mitchell Lick?

A. The main mountain at Mitchell Lick.

Q. 176. You don't mean the top of Laurel Top?

A. No, you pass Laurel Top.

1503 Q. 177. Nor the top of State ridge either?

A. No sir.

Q. 178. Had it anything to do with the top of State ridge?

A. Not a thing, it doesn't go near that.

Q. 179. Did he run any line from the North Carolina side to the State ridge at all?

A. Not that I know of.

Q. 180. I understand Mitchell Lick to be as you describe down the slope from the top?

A. Yes, there is a low gap and it is in the low gap.

Q. 181. And from the top to the State ridge, the State ridge goes off in a west course?

A. Yes sir.

Q. 182. Bearing to the right as you go southwest on?

A. Yes, as if Laurel Top was here (indicating) you run out here (indicating) and get away out here and it is just an open hill side and you hardly ever would notice where the gap was. I have pesed there often and it was all I could do to tell where the Mitchell Lick was.

Q. 183. How far is it from the nearest corner of the 100 acres to the top of the State ridge?

A. Well it is some half a mile I guess.

The State of North Carolina objects to the testimony regarding the entry because this is not the proper way to prove its location.

The further taking of the testimony of this witness is suspended until Friday, December 2, 1910, so that the witness may procure the map delivered to his father by John B. Tipton.

John W. Stratton.

The examination of this witness was resumed on this Dec. 2, 1910, at 3 P. M.

1504 Direct examination continued.

By General CATES:

Q. On Tuesday we adjourned the taking of this deposition until you could secure the map which was made as you stated by John B. Tipton?

A. Yes sir.

Q. 185. This map covering considerable territory of land in Monroe County including land lying east of the State ridge?

A. Yes sir.

Q. 186. Have you the map?

A. Yes it is here somewhere.

Q. 187. Is this the map (producing map)?

A. Yes sir.

Q. 188. When was it made by John B. Tipton?

The State of North Carolina objects to the introduction of the map or examination of this witness from the map, unless he made the same himself.

Q. 189. Where did you get this map?

A. It belonged to my father; he died in '63 and my sister kept it until she died, and then I got it.

Q. 190. Did you say John B. Tipton gave it to your father?

A. Yes sir.

Q. 191. As having been made by him?

A. Yes sir.

Q. 192. Showing the country around the head waters of Tellico River?

A. Yes sir.

The State of North Carolina objects to this examination for the same reason given above.

Q. 193. Please file this map as exhibit No. 1 to your deposition?
A. I do so as requested. My father was in that company.

The State of North Carolina objects to the introduction of this map because it does not show that it has anything to do with
1505 the controversy between the two states; that it does not show the state line or purport to show it at any point.

Q. 194. State whether or not your father and John B. Tipton were jointly interested in considerable number of grants of land east of the State ridge?
A. Yes, east of the State ridge.
Q. 195. Those are known popularly as the Cattle Company grants?
A. The Cow Company.
Q. 196. Why?
A. They raised cattle there.
Q. 197. Grazing them around the head waters of Tellico River on that land there?
A. Yes sir.
Q. 198. When did you commence doing that?
A. In the year '40; I was just a boy,—15 or 16 or 17 years old.
Q. 199. And continued it to when?
A. For ten years; then moved out, but we kept hearders on there up to the time of the war, or about the time of the war.
Q. 200. Then did you do any of that after that?
A. No; as soon as the war was over I took possession of it, and still herded there till 4 or 5 years ago; my son still keeps cattle there; we have a meadow at the head of the north prong of the river right joining the line.

Recross-examination.

By Mr. POSEY:

Q. 201. This map embraces land on Coker Creek?
A. Yes sir.
Q. 202. Coker Creek is not in dispute between North Carolina and Tennessee is it?
A. Pretty close to it.
Q. 203. Coker Creek territory, and there about the toll-
1506 gate,—that isn't in dispute is it?
A. No not that I know of.
Q. 204. All this Coker Creek country is not in dispute at all?
A. Not that I know of.
Q. 205. This is the land that your father and Tipton owned, to the Coker Creek country?
A. It shows our land there.
Q. 206. Your father and Tipton owned the whole thing, or just a few tracts?
A. About 12,000 acres. Our stock ran from the Hang Over.

Q. 207. There was nothing to hinder them from running anywhere?

A. No sir.

Q. 208. No fence?

A. No sir.

Re-examination:

Q. 109. When your father and Tipton under their grants from the State of Tennessee were controlling that land around the head waters of Tellico, did the North Carolinians interfere with you?

A. No sir.

Q. 110. Did they recognize your claims over on the east of the Mitchell Bald as being in Tennessee?

A. The Mitchell Bald. I don't know it by that name, the Mitchell Lick I know.

Q. 111. I mean the land around the head waters of Tellico, they didn't interfere with your possession there?

A. We entered land on the North Carolina side that ran up to our land on the Tennessee side.

And further saith not. JOHN W. STRATTON.

1507 Sworn to and subscribed before me this the 29th day of Nov., 1910.

The witness' name is signed to this deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

S. E. CLEAGE.

— days and — miles.

1508 DECEMBER 2, 1910.

CHARLES SEYMOUR, next witness, duly sworn, deposed and said:

Examined by Gen. CATES:

Q. 1. This is Mr. Charles Seymour?

A. Yes sir.

Q. 2. How old are you?

A. 67 years.

Q. 3. Where do you live and what is your present occupation?

A. I am a lawyer; my residence has been in Knoxville for the past forty odd years.

Q. 4. Are you a graduate of any college?

A. Western Reserve University.

Q. 5. How long have you lived in Knoxville?

A. Since 1865.

Q. 6. Please state in your own way what has been your business?

A. Since 1870 my occupation has been as lawyer, in general practice, except 9-tenths of my time has been devoted to real estate and late years to corporation cases. And in that real estate work I have had occasion to investigate county and state boundaries and look after the surveys as an element of title, as title cannot exist without boundaries, it has been special study of mine for many years.

Q. 7. Are you a practical surveyor?

A. During the years of 1865 to 1870 I did with my own hands a good deal of surveying and acquired familiarity with wood craft needed by surveyors and have since used that experience so gained.

Q. 8. State whether in representing the owners of real estate your business has included to a large degree the settlement of titles to mountain lands and in fact boundaries of mountain lands in the mountainous parts of East Tennessee?

A. I have had a great deal to do in East Tennessee and the adjacent states and the mountain lands where the titles are
1509 most complicated and were forty years ago; and a large part of my work has been in connection with the final settlement of titles of large areas and the care and development of such locations and giving such counsel as was required.

Q. 9. State whether or not during these years which have elapsed since 1870 you have represented the owners of lands lying in the County of Monroe in Tennessee?

A. I have.

Q. 10. And whether or not you have owned lands in that county yourself or been interested in tracts in that county?

A. I have been interested to a limited extent only; but have represented owners of large areas.

Q. 11. In a general way state what lands you have represented in Monroe County?

A. The lands between the Little Tennessee and the Georgia Line, I think four fifths of the Ocoee District has been passed under my close examination for a distance of 70 or 80 miles, and varying in width from some narrow necks to 20 miles.

Q. 12. I will ask you whether or not you were acquainted with a surveyor and engineer by the name of Hoyt?

A. I knew David Hoyt very well; a man who came from Maryland, where he had been a surveyor; I always understood at some period in his life, a county surveyor, but shortly before he came to Tennessee he had an office as general surveyor in Baltimore near Monument Square, close to a hotel; I forget the name of it; on the Square; and my first acquaintance with him was by letter in 1876 when he had just gone to Coffee County, Tennessee to look up a title to a 5,000 acre tract and was engaged in surveying it, and wrote to me for certain information. I think I had a short interview with him, a mere chat,—a few words at the railway station about that time.

Q. 13. Did you represent any lands in Coffee County too?

A. I was looking after the half million acres known as the Barrel Grants in Middle Tennessee, some of these lands were in Coffee County. The next I knew him was in 1883 when I proposed to him to come to East Tennessee and do some surveying and he came to see me at my office in Knoxville, and I sent him out to
1510 survey out 2,400 acres in the north end of Monroe County, touching at several points on the Little Tennessee River with instruction to survey those lands and to do sufficient surveying to make a map, a recogn-issance map of the county around. I told him to go and carry the survey as far east as the State Line, and into the

MAPS

TOO

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Tellico country, so that by a line which a surveyor calls a tie line, he could show the relative position of this tract with the other larger boundaries, my clients owned on the Tellico waters and I gave him a roving commission to work up the country so I could know what could be done with the land, and to know the neighbors and conditions generally and to know whether the tract was worth improving by purchasing additional land, as it was small for a mountain tract, or whether it should be disposed of and the region abandoned. Under that roving commission he made constant reports to me, but took various times off, our arrangement was that he was given carte blanche in almost every respect. He was to go out and stay there for months at a time until he could work up the matter his own way. He was a man of about 60 years, and owing to some family disappointment was content and wanted to go out in the woods and do his work when he felt like it and not to attempt to drive his work in bad weather.

Q. 14. State whether or not he was a competent, skilled surveyor?

A. He was one of the best surveyors on rough land and made the most accurate reports of any man I ever knew in all my experience. An exceptionally careful man, who would go into the woods and use the same accuracy he would have used in measuring suburban property in Baltimore, his chaining was notably accurate and his reports while not elegant and drawn in a way to make pretty maps, were always clear.

Q. 15. State whether or not when you started him out in Monroe County you furnished him with any sort of a map?

A. I gave him a tracing of that part of the Ocoee District in which the 2,400 acres lay, based on the official map at Cleveland, where the office of the Ocoee District is and told him to get me what further information he needed. He wrote me with regard to the State line and I sent him a copy of the description as given in the Code
1511 of Tennessee, but he wrote me afterwards that my letter was slow in reaching him and he had gone about 15 miles and found a justice of the peace who had a code, and he made a copy of it himself.

Q. 16. You mean the Code of Tennessee?

A. The Code of Tennessee.

Q. 17. Was that map you furnished him on the same scale as the original Ocoee Map on file at Cleveland or reduced?

A. Reduced to convenient size for handling.

Q. 18. What did he do with that?

A. Left with me. Do you mean the reduced map furnished him?

Q. 19. Yes.

A. Left it with me.

Q. 20. Have you it?

A. Yes sir.

Q. 21. Will you produce it and file it as Exhibit No. 1 to your deposition?

A. I did not bring it from my office but will send for it.

(Here follows map marked Exhibit No. 1 to Deposition of Charles Seymour.)

The State of North Carolina objects to the introduction of the map just described as being hearsay and irrelevant. And from what the witness says appears to have been partly made by this person in his employment.

Q. 22. Now I will ask you to state if you or your clients were at all interested in that piece of land lying between Slick Rock and eastward towards the Hang Over.—between Slick Rock and eastward to Hang Over?

A. I was not interested at all in any way in any land outside of the section of country first above referred to, the 2,400 acres.

Q. 23. Your interest and that of your clients was confined to the lands which had been sectionized?

A. My interest was then confined to the 2,400 acres shown on that map and which did not lie within some miles of the disputed territory; and the examination made by Hoyt and myself so far as I had anything to do with it was absolutely disinterested. I had no
1512 interest whatever in any controversy; there was no controversy at that time known to me to exist.

Q. 24. There was none known to you at that time?

A. No sir.

Q. 25. While waiting on the map I will ask you if you have ever been on that Hang Over Ridge?

A. Yes I have been on it; about half way between the river and high point; I never was on the high point.

Q. 26. Have you been on the state line north of the river, north from where it crosses the river?

A. Not to survey or locate it; I never was there with a surveyor.

Q. 27. Tell what you know about this Hang Over Country in your own way?

A. It is a little difficult after so many years to distinguish between what I saw and what I have learned from surveyors' maps. I was sometime in the seventies, probably 1877 or 1878 in the summer I went south east from a cabin on Yellow Hammer Creek into that country with a guide who has since died, and spent 5 or 6 days in that region; and in that trip I left the man who was with me and got a local man to take me from the point near the divide between Yellow Hammer Creek or the next stream above it, a small stream, over into the valley of Slick Rock. We crossed the creek, wading waist deep, and went up on the side of the mountain to the top of Hang Over Ridge, the Hang Over Lead according to my recollection about half way between the summit and the river, and reached a point from which I could look across the river over into Blount County mountains to the north. And so many others are familiar, more so than I, that I cannot see that my recollection can be conclusive as to any point, except that the line of the mountain and the valley of the creek were both before me and the line of the crest of the mountain north of the river. I could not see the river from there at that time; it was too thick with timber on the banks.

Q. 28. Is David Hoyt living or dead?

A. He died as I am well assured by general report and some con-

nection with his heirs, 15 years ago, or 20. His surveys made in 1883 to 1886 inclusive were made when he was an old man,—looked old.

1513 Q. 29. State if at that time Hebbard had acquired any interest in land in that country?

A. Hebard had not acquired lands then: it was some years after Hoyt made his surveys that Hebard acquired any title there.

Q. 30. Do you know about there being two Yellow Hammer creeks, one below the mouth of Slick Rock in Monroe County Tennessee and the other east of Slick Rock in Graham County North Carolina?

A. The stream I refer to,—I may have quoted the name wrong,—is the stream that came into there a long distance below Slick Rock. Going as I did into that country from the west, I do not feel sure as to the present names of these creeks: that however was a name that stuck in my memory as one of the creeks we were on.

Q. 31. Now there has been brought from your office a map such as you have referred to as having been given to you by Hoyt and returned by him with some additional work on it. This is the map I now show you and ask you to file as Exhibit No. 1 to your deposition (producing map)?

A. (Examining map.) This is the map. I recollect as furnished to Mr. Hoyt and all prepared in my office with the exception of the work at the north east corner of it where in Hoyt's peculiar caterpillar work, he has shown the mountains and written in his own handwriting the words "Hang Over Mountain 5,240 ft. high" and printed along the mountain "State Line" and the caterpillar work is all his. He also indicated the true line of the Little Tennessee River as found on survey by him showing great discrepancies between the line of the river as indicated on the Ocoee map and as actually found by him on survey.

Q. 32. Now as I understand you, when this map went into Hoyt's hands there was nothing on it east of this line here which is marked "Slick Rock Creek?"

A. Nothing whatever.

Q. 33. Who wrote these words "State Line" at the southwestern terminus of what you call the caterpillar work?

A. Evidently done in my office before it was sent to Hoyt.

Q. 34. Who wrote the words "N. C." at the southwestern
1514 end of what you call the caterpillar work?

A. I should say it was done when the map was made. I don't think it is in Hoyt's handwriting.

Q. 35. Did he do all this etching or tracing from the north side of the river across the river and leading around up to the place upon which he has printed "Hang Over Mountain?"

A. That is all Hoyt's as far as I can see. I know his peculiar way of working and it will correspond with another map which is wholly in his handwriting.

Q. 36. State whether or not according to this tracing of the State Line which you call caterpillar work by Hoyt the line appears to

cross the Little Tennessee River above, or at the mouth of Slick Rock Creek?

The State of North Carolina objects to all questions relative to the work done by Hoyt, because hearsay.

A. The map of the Ocoee District originally furnished him was found to be inaccurate by Hoyt, and he makes a change in the place of the State line. In other words,—the Ocoee District Map does not show by half a mile the true position of the State line of the Little Tennessee River. The Little Tennessee River by survey is something like half a mile further to the north at the place where the State line crosses it than it is on the careless work of the Ocoee District map. Both points of the crossing however would be considerably above the mouth of Slick Rock.

The State of North Carolina objects to the statement of the witness as to the correctness or incorrectness of the line.

A. If I understand you this map when given to him showed the river as it is a white stream between the little blue line running down and as Hoyt found it by actual survey it appears between the heavier black lines turning a little from the sectionized land and then running northeast at the second big bend further on the Blount County side than the Ocoee District map projected it,—is that right?

The State of North Carolina objects to statements of the witness as to how Hoyt found it and his interpretation of it and further, from the testimony it appears that this was the interpretation
1515 of Hoyt, and the interpretation of the calls of the Special Act by Hoyt and therefore incompetent.

Q. 37. I will ask you to explain generally what these red squares mean on this map exhibit No. 1 to your deposition?

A. They represent the lands of my clients as well as could be traced from the Ocoee map.

Q. 38. Now Mr. Seymour, what do you know about the line between Tennessee and North Carolina at the head waters of Tellico River?

A. My clients claimed a large boundary of land in that region, bounded on the northeast, east and south by the State line; I never was on that land myself but twice and not then following the boundary line. I spent five weeks on Tellico River; in the spring of 1871 and was on the river as far as the forks several times afterwards, there *were* one man who took active part in the survey of the State line, and two others who were apparently hangers-on, messengers and porters of supplies, living in Monroe County, near my camp. Of these men the older one talked with me at great length in regard to the State line, he was very proud to have had anything to do with it, and inclined to claim precedence over the other two who held inferior positions while he claimed to have been with the surveyor and principal men of the party, commissioners he called them.

Q. 39. What was the name of this man?

A. Uncle Joe or Sol Graves: I think Sol Graves was his name. Two brothers,—at this moment I do not now recall which was the elder. Another man was Brannam. Brannam I saw little of. Both the Graves lived within about 200 yards of where we camped. Our party included about eleven men, a geologist, a mineralogist, and various people including two men with barometers to take the heights of the mountains.

Q. 40. Was it Wetmore?

A. No; Gen. Jarvis of Ohio was at the head, and I was his assistant and advisor. Waring was doing the surveying.

Q. 41. What did uncle Joe Graves tell you?

The State of North Carolina objects to the declaration of Joe Graves as hearsay and incompetent.

1516 A. The two old men told the story of the survey.

Mr. POSEY: Which one told you?

A. They both agreed on the story but the older one is the one that told me and as for recollecting at this instant which it was after 39 years, I am not confident. I may have a memorandum or old diary which will separate the two men.

The State of North Carolina objects to any declaration of the witness in regard to this matter unless he can fix the name of the man.

Q. 42. Give his name according to your best recollection. Was it Joseph Graves?

The State of North Carolina objects to this question as leading.

A. They both concurred in the account. I think Uncle Sol Graves was the oldest, and he was not past memory of it.

Q. 43. What age men were they?

A. My recollection is that the older one was about 20 years old at the time of the survey and the other about 15. And the older would contradict the younger when he would make a statement, and say "I know about it".

Q. 44. What did he tell you he knew?

The State of North Carolina objects to any answer to this question unless the witness fixes the name of the man who made the statement.

A. These two old men both told me the story over and over, it was the only thing in their lives they thought would interest me, that they were present at the making of the important survey, a more important one than the one we were making, and that it was the original survey of the State line, at which they were present, and made by a large party of men they said, and that the party came along the Hang Over, and they followed the line along the divide of the mountains until they reached a point where the fog came on, and it was towards night, and they took the first turn down to get a place to camp where there was water, and they followed the

ridge down to the river and camped there for the night, and
1517 the next morning finding they were down in a hole they went to the top of the mountain further west, and sent a man back to tell the marker who was sometimes a long distance behind them, to stop marking; and that they said they would plat out the mountain around as it was, and would go on and they went on to the southward, the Graves brothers claimed to have been with the surveyors at that time they were running the line between the States from the Little Tennessee River to the Hiawassee. But I had not discussed with them where the line ran at any of the points of it except their telling me about there being some marked trees one a holly at the place where the parties camped. They said they sent back men who went around the mountain and reported the shape of it, and those men did not get in until after they had passed the turnpike where the Graves left.

Q. 45. What ridge was it did he say that party came down on, according to these men in their declarations to you?

A. It was a ridge between the head-waters of Tellico and one of the prongs called by some Rough Creek, and by others I think Indian Creek.

Q. 46. And that came to be called the State Ridge?

A. Since this litigation sprang up it has been called the State Ridge universally.

Q. 47. On what waters did they camp, did he say?

A. They said where they crossed the main Tellico River. He took one of our party, either a surveyor or one of the assistants, or he sent a local man there, I think one of the Miller boys or an older man known as Buck Miller a preacher to show them the place, so they could find this point which was a notable camp, with fine water and a good place for a camp. During that survey they subsisted mostly on game. In 1871 I found sufficient for supply of our party of eleven.

Q. 48. You say that he said when they discovered they were under the main ridge they sent back a man to stop marking and strike out the marks they had made?

A. They said so most distinctly. And they said the marker was sometimes a day behind the rest of the party.

1518 Q. 49. They told you the marker was sometimes a day behind?

A. Yes that the marker followed them on the trail. In those days people could follow, where today they would be lost. Men were trained to use their eyes.

Q. 50. State what you know about the State of Tennessee having granted lands lying between this region which has come to be called the State Ridge, and the main mountain or divide of the waters?

A. The grants from Tennessee cover by their acreage calls, fitted together, as they are bound to be under the sectionized area, some two-thirds or more of the land between what is now called the State Ridge and the main divide of the mountain. The divide of the mountain sometimes swings inward toward the main Ocoee district so as to leave some of the grants with very little land in

them; and in other places it swings a mile out in some sharp points, the exact distance depends on the report of the surveyor. I only know the general lay of the ground from what my own trips there told me, where it is evident in order to get to the distant points on the main mountain the distance will be greater than that shown on the Ocoee map.

Q. 51. About how many grants do you know of being issued by the State of Tennessee for land east of what is called the State ridge and the main top of the mountain, the divide of the waters?

A. Some 22 including about 10,000 acres,—this is approximation only.

Q. 52. Copies of those grants or a large number were put in evidence in the case of Fain vs. Stephenson?

A. I don't remember how many, some were, a considerable number were.

It is agreed that copies of those grants may be taken from that record and copied into this record as Exhibit No. 2 to the deposition of the witness, Charles Seymour.

Cross-examination.

By Mr. POSEY:

Q. 53. Col. Seymour, did you furnish Hoyt the map of 1821 when he went there to survey towards Slick Rock?

1519 A. A substantial copy of it.

Gen. CATES: The map of 1821?

A. I will correct it. I furnished him a map from the Ocoee records.

Q. 54. Did you furnish him the map of 1821 establishing the state line?

A. No, that map has been recently discovered, I didn't have it.

Q. 55. Were you with him when he made his survey?

A. No sir.

Q. 56. You are just swearing to hearsay, what he said about inaccuracies?

A. I have had other experiences in regard to the inaccuracy of the Ocoee map,—notable ones.

Q. 57. So you were not present at that survey at all?

A. I was not present at the Hoyt survey.

Q. 58. You say you had talks with Joseph or Sol. Graves?

A. Both.

Q. 59. They told you they went on down the mountain for a convenient place to camp?

A. That was their statement.

Q. 60. Did they tell you about marking the line on down the ridge?

A. They said the marker followed and had marked it they said; that some one in connection with the camp had marked a holly tree while they were on that survey.

Q. 61. Did they tell you when they told you about going up and platting in this other line, did they tell you they measured it?

A. They did not. They guessed at it. That was their laugh at the survey, that they guessed at all that part of the line.

Q. 62. If the report of the Commissioners is that they run the line, measured it and marked it, and established mile posts every mile,—if that report filed by them is correct, then Graves was mis-'aken?

A. He contradicts it flatly,—contradicts their report.

Q. 63. The report they made is filed and signed. You have seen the names signed to this map on file here?

A. Yes sir.

Q. 64. You say the statement of the Graves men flatly
1520 contr-dicted the report of the Commissioners?

A. Precisely.

Q. 65. As to where they ran on Tellico?

A. As to the measurements.

Q. 66. They call for mea*d*uring up to the west prong of Tellico at 93 miles?

A. I don't recall.

Q. 67. And to the Unaka road 101 miles. Don't you know it would be 108 or 110 miles to the Unaka road to go around that loop?

A. I have heard recent surveyors say so. I know if you follow the general mountain the line will be shorter than if you go into those long knobs at the points of the streams coming into Tellico. This question was not with us when we were running there and it never entered the heads of anybody I met on that trip in 1871 that there was any other state line than this on the divide of the waters but the question was why were our quarter sections sometimes short running to that point, and sometimes running over.

Q. 68. You say you never heard it called the State ridge until since this litigation?

A. Not this suit, but the North Carolina h*e*arders came there and there was some controversy over that.

Q. 69. How long have you known it called the State ridge?

A. 15 years.

Q. 70. Hav-n't you heard men say they knew it as the State ridge for 50 or 60 years?

A. I have heard the testimony of witnesses.

Q. 71. Didn't you hear Houston Miller say he had known it ever since he was a boy and supposed they called it that because they made a mistake and went there?

A. I don't recall.

Q. 72. Haven't old men told you they knew it ever since they w-re boys?

A. Not until recently.

Q. 73. Are you still representing the claimants to this land?

1521 A. I have no interest whatever in this suit.

Q. 74. You represented Stephenson against Fain?

A. I did.

Q. 75. All this matter was gone over about this line in that case?

A. I took some of the testimony.

Q. 76. You didn't make any statement then about it?

A. Not that I recollect.

Q. 77. You heard many old men say then they knew it as the State ridge ever since they were boys?

A. I heard a good deal of that at Murphy.

Q. 78. Those people were men who lived in the vicinity of that country?

A. All North Carolinians I think.

Q. 79. In that suit you undertook to make this same testimony by other witnesses did you or not?

A. I think it was brought out substantially as I have said.

Q. 80. Where did the court find the State line to be in that case?

A. In the suit of Stephenson against Fain it was in Fain's favor.

Q. 81. Found to run down the State ridge?

Gen. CATES: The State of Tennessee objects to a statement of the decision in the Fain cause, because (1) If there is such a decision there is a record and it is the best evidence; and (2) Because the State of Tennessee was not a party to that law-suit.

Re-examination:

Q. 82. You were asked if you were not counsel in some case of Stephenson against Fain and whether you testified in that case and you said no you did not, now I will as- you to state if you did not have some delicacy in testifying in a case where you were counsel?

A. I should prefer to keep out of the witness stand in a case of that sort.

1522 Q. 83. In your cross-examination you were asked if you had not heard when you were down in there with the party to which you have referred examining those lands way back in the seventies, that the state line was along a ridge which has come to be called the State ridge. I will ask you to state whether or not at that time you heard of any claim being made on the part of any one that the line between the states ran along what is now called the State ridge in this record?

A. In 1871 I heard nothing of the sort. The first intimation I had of any trouble was when some men who were hearding cattle under permission of my clients were interferred with by the Fains, father and sons.

Q. 84. When was that?

A. 15 or 20 years ago. I brought a suit and recovered judgment in the middle or early nineties.

Q. 85. In favor of your clients?

A. Judgments in favor of my clients.

Q. 86. Against the Fains?

A. Yes for interference with the hearders.

Q. 87. State whether or not at that time in the seventies, when you were down there, the line between the states was generally understood by those people who lived in that country, as running along the top of the main ridge, or divide of the waters around the head waters of Tellico?

A. That dividing of the waters so far as I heard of in the four months active life I spent in 1871 in that region, was universally recognized as the state line. These old men had told the story undoubtedly of men running that line to many others and there was the talk of the country that the Commissioners made a shabby job of it, but that is putting it in my language, that was the sense of the expression, but there was no difference of opinion expressed as to the divide of the waters being the state line. The only question that puzzled me with my then one year's experience at the bar was what became of the land between the Ocoee district where these sections call-d for 26 acres, yet to make them go to the divide would have required an addition of several hundred acres.

1523 Q. 88. You were asked if the statements of the Graves were not contradictory of the report of the commissioners. I will ask you to state where the Graves said the true line between the States is or was at that time?

A. Their statements to me were in ridicule of the commissioners' report. They did not refer to it as the commissioners' report. It was ridiculing the idea that the line was absolutely chained, that they only ran down the leading spur and joined there and guessed at the rest of it. So our work in making survey through there would find different lines from what expected. We could not find a marked state line.

Q. 89. You mean around the divide of the waters?

A. None because they cut across and guessed at the distance.

Q. 90. State whether the old men said the true line was around the divide, and it was to be platted in?

The State of North Carolina objects to this question as leading and asking the conclusion of the Graves as to the true line.

Q. 91. What did they say about that?

A. There was no intimation about that, about any of the land on the waters of Tellico belonging to North Carolina. That the line must follow the divide was the impression of all the people in that part of Monroe County. It was called the "pocket" because it extended so far out from the main body of land there.

Q. 92. State whether or not the land east of what is now called the State ridge and in that territory you call the pocket between the State ridge and McDaniel Bald were assessed to your clients claiming under Tennessee grants?

A. They w-re assessed to my clients claiming under Tennessee grants from 1860 up to the time when my clients sold the land some four year ago, continuously and the taxes were paid. In 1870 I found these lands had been sold for taxes for the years 1860 to 1869.

A. 93. Sold by whom?

A. The State of Tennessee and I redeemed and cleaned up all tax claims on that property and since then the taxes have been paid by me.

1524 Mr. POSEY: There is no question but both sides have paid taxes.

Gen. CATES: Is there any question about Mr. Seymour's oral statement of the tax sale?

Mr. POSEY: I do not care for the record of it.

Q. 94. Is there anything further about this matter that you know that would throw *ling* on it which occurs to you just now?

A. The grants would show all the dates and I think you have the sense of the matter.

And further saith not.

CHAS. SEYMOUR.

Sworn to and subscribed before me this the 2nd day of Dec. 1910.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

S. E. CLEAGE.

1525 EXHIBIT NO. 2 TO DEPOSITION OF CHARLES SEYMOUR.

No. 5986.

The State of Tennessee to all to whom these presents may come, Greeting:

Know ye that in consideration of two entries made in the entry taker's office of the Ocoee District of No. 8037 & 8038 dated the 25 day of July 1842 by Francis W. Lea as General Enterer, there is granted by the State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing two hundred and forty 4 acres lying in the County of Monroe in the said district, situate in the 7th range east of the basis line fractional township 2 and 5 section being the northwest and southwest fractional quarter- of said section beginning at the no. west corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville, on the 6th day of September in the Year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, Secretary.

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th day of October 1842.

The within is a true copy from the records in my office
1526 Cleveland, Tennessee, January 24, 1851.

FRANC. W. LEA,
Register of Monroe Co., Tenn.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57. Registered in Book O, page 478.

Witness my hand at office in Madisonville.

WILLIAM G. BAGLE,
Register of Monroe Co. Tenn.

No. 5982.

The State of Tennessee to all to whom these presents shall come Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee District of No. 8038 dated the 25 day of July 1842, by Francis W. Lea as General Enterer, there is granted by the State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing 160 acres lying in the County of Monroe in the said District situate in the 7th range east of the basis line fractional township 2 south and 6 section being the southwest corner of said section beginning at the southwest corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones Governor of the State of Tennessee hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville, on the 6th day of September
1527 in the Year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October 1842.

The within is a true copy from the records in my office. Jan 24, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee Dist..

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Book A, page 57. Registered in Book O, page 479.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5605.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of three entries made in the Entry taker's office of the Ocoee District of Nos. 7571, 7572 & 7573 dated the 19th day of May 1842 by Francis W. Lea as General
1528 Enterer, there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing four hundred and eighty acres lying in the County of Monroe in said District situate in the 7th range east of the basis line fractional township two and sixth section being the northeast, southeast & northwest corners of said section, beginning at the no. east corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones Governor of the State of Tennessee hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 27th day of July in the Year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th October, 1842.

JANUARY 29TH, 1851.

The within is a true copy from the records in my office at Cleveland, Tennessee Book I.

FRAN'S W. LEA,
Register, &c., of Ocoee Dist.

The within is a true copy from the records in my office. Cleveland, Tennessee, Jan. 24, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee Dist.

1529 STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 469.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe Co., Tenn.

No. 5606.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee District of No. 7574 dated the 19th day of May 1842 by Francis W. Lea as general enterer; there is granted by the State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and sixty acres lying in the County of Monroe in the said district situate in the 7th range east of the basis line fractional township 2 and seventh section being the northeast quarter of said section, beginning at the no. east corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones Governor of the State of Tennessee hath hereto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 27th day of July in the Year of Our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

1530 Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st day of October, 1842.

JANUARY 20TH, 1851.

The within is a true copy from the records of my office. Cleveland, Tennessee, Book I.

FRAN'S W. LEA,
Register, &c., of the Ocoee Dist.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Book A, page 56. Registered in Book O, page 470.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE.
Register of Monroe County, Tenn.

No. 5607.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee District of No. 7475 dated the 19th day of May 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and sixty acres lying in the County of Monroe in the said district situate in the 7th range east of the basis line fractional township two and
1531 seventh section being the northwest quarter of said section, beginning at the northwest corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 27th day of July in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

JANUARY 20TH, 1851.

The within is a true copy from the records in my office at Cleveland, Tenn. Book I.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56. Registered in Book O page 470.

Witness my hand at Madisonville.

WILLIAM G. BOGLE.
Register of Monroe County, Tennessee.

1532 No. 5981.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. 8042 dated the 25 day of July 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and sixty acres lying in the County of Monroe in said district, situate in the 7th range of the basis line fractional township two and seventh section being the southwest quarter of said section beginning at the so. west corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the — day of —— in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st day of October, 1842.

The within is a true copy from the records in my office. Cleveland, Tennessee, Jan. 26, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

1533 STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH. AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56.
Registered in Book O page 474.
Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5603.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of three ent*i*res made in the entry taker's office of the Ocoee district of Nos. 7565, 7566, 7567, dated the 19th day of May 1842 by Francis W. Lea as general enterer: There is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing four hundred and eighty acres lying in the County of Monroe in the said district, situate in the 7th range east of the basis line fractional township two and eighth section being the south east southwest, and northwest quarters of said section, beginning at the So. east corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 27th day of July in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

1534 Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee Dist.

Recorded 25 October, 1842.

The within is a true copy from the records of my office, Jan. 20, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee Dist.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH. AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registra-

tion and noted in my office in Note Book A, page 56. Registered in Book O, page 475.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tenn.

No. 6120.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee District of No. 8040, 8041 dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing two hundred and forty-nine acres lying in the county of Monroe in the said District situate in the 7th range east of the basis line fractional township two and eight section being the northeast fractional and southeast quarter of said section—beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

1535 In witness whereof James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 6 day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the governor: JAMES C. JONES.
JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 day of October, 1842.

The within is a true copy from the records of my office Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57, registered in Book O, page 478.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County.

No. 5604.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee District of No. 7569 & 8385 dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing
1536 two hundred and sixty acres lying in the County of Monroe in the said District, situate in the 7 range east of the basis line fractional township two and ninth section, being the southwest quarter and the southeast fractional quarter of said section—beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 27 day of July in the year of our Lord one thousand eight hundred and forty two, and of American Independence, the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56, and registered in Book O, page 169.

Witness my hand at office in Madisonville,

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

1537 No. 5609.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee district of No. 7569 & 8349 dated the

19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing two hundred and sixty acres, lying in the County of Monroe in the said district, situate in the 7 range east of the basis line fractional township two and sixteenth section, being the northwest quarter and the northeast fractional quarter of said section—beginning on the northeast corner of said quarter of said section—with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 27 day of July in the year of our Lord one thousand eght hundred and forty two and of American Independence the sixty seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON.
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the record in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA.
Register, &c., of the Ocoee District.

1538 STATE OF TENNESSEE.
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56—registered in Book O, page 472.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6122.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries in the entry taker's office of the Ocoee district of No. 8047, 8048, 8049, 8050 dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land con-

taining six hundred and forty acres lying in the County of Monroe in the said district situate in the 7th range east of the basis line fractional township two and seventh *teenth* (17) section being the northwest, northeast southwest and southeast quarter of said section—beginning at the northwest corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof said James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

1539 J. C. TIPTON,

Register of the Ocoee District.

Recorded 25 day of October 1842.

The within is a true copy from the records of my office Cleveland, Tennessee Jan. 24. 1951.

FRANCIS W. LEA.

Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH. AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57. Registered in Book O, page 477.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE.

Register of Monroe County, Tennessee.

No. 6121.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee District of Nos. 8043, 8044, 8045 & 8046 dated the 25th day of July 1842, by Francis W. Lea as general enterer; there is granted by said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing six hundred and forty acres lying in the County of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and eighteenth section being the northeast, northwest,

southeast & southwest quarters of said section beginning at the northeast corner of said quarter with its appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to
1540 the said Francis W. Lea and his heirs forever.

In Witness whereof James C. Jones governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh

By the Governor:

JAMES C. JONES.

JOHN S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON.
Register of the Ocoee District.

Recorded 25th day of October 1842.

The within is a true copy from the records of my office Cleveland. Tennessee Jan. 24th 1851.

FRANCIS W. LEA.
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57 registered in Book O, page 477.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE.
Register of Monroe County, Tennessee.

No. 6149.

The State of Tennessee to all to whom these presents shall come. Greeting:

Know ye, that in consideration of three entries made in the entry taker's office of the Ocoee District of Nos. 7995, 7996 & 7997 dated the 25th day of July 1842 by Francis W. Lea as general en-
1541 terer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs a certain tract or parcel of land containing four hundred and eighty acres lying in the County of Monroe in the said district situate in the 7th range east of the basis line fractional township two and nineteenth section being the southwest, southeast and northwest quarters of said section beginning at the southwest corner of said quarter, with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th day of October 1842.

The within is a true copy from the records of my office Cleveland, Tennessee Jan. 24, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 57, registered in Book O page 476.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

1542 No. 6123.

The State of Tennessee to all to whom these presents shall come. Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee district of Nos. 8054, 8055, 8056, 8057 dated the 25 day of July 1842 by Francis W. Lea as general enterer: There is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing six hundred and forty acres lying in the County of Monroe in the said district situate in the 7th range east of the basis line fractional township two and twentieth section, being the northwest, *northwest,* southeast and southwest quarters of said section, beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 6 day of Sep-

tember in the year of our Lord one thousand eight hundred and forty two, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded the 25th day of October 1842.

The within is a true copy from the records of my office Cleveland Tennessee, Jan. 24, 1851.

FRANCIS W. LEA.
Register of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH. AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 57, reg-
1543 istered in Book O page 476.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE.
Register of Monroe County, Tennessee.

No. 5980.

The State of Tennessee to all to whom these presents shall come. Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. 8052 dated the 25 day of July 1842 by Francis W. Lea as general enterer: *This* is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and twenty five acres lying in the County of Monroe in the said district, situate in the 7 range east of the basis line fractional township two and twenty first section, being the northwest fractional quarter of said section—beginning at the no. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6 day of September in the year of our Lord one thousand eight hundred and forty two, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded October 1st 1842.

The within is a true copy from the records in my office, Cleveland Tennessee, Jan. 24, 1851.

1544 FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56, registered in Book O page 474.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5608.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee District of No. 7534 dated the 2nd day of May 1842 by Francis W. Lea as general enterer: There is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing eighty four acres lying in the County of Monroe in the said district, situate in the 7th range east of the basis line fractional township two and twenty first section, being the southwest fractional quarter of said section,—beginning at the so. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 27 day of July in the year of our Lord one thousand eight hundred and forty two, and of

1545 American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October 1842.

The within is a true copy from the records in my office Cleveland Tennessee Jan. 24, 1852.

FRANCIS W. LEA,
Register &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56; registered in Book O page 471.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5610.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. 7570 dated the 19th day of May 1842 by Francis W. Lea as general enterer: There is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and 60 acres lying in the County of Monroe in the said district, situate in the 7 range east of the basis line, fractional township two
1546 and twenty eighth section, being the southwest quarter of said section—beginning at the so. west corner of said quarter with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 27 day of July in the year of our Lord one thousand eight hundred and forty two, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M. 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56 registered in Book O, page 471.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5966.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee District of No. 7986 dated the 25th day of July 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and
1547 six acres lying in the County of Monroe in the said district, situated in the 7th range east of the basis line fractional township two and twenty-eighth section, being the northwest fractional quarter of said section—beginning at the northwest corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville on the 6 day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee Dist.

Recorded the 1st of Oct. 1842.

The within is a true copy from the records of my office Cleveland, Tennessee Jan. 24th 1851

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56 registered in Book O, page 473.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

1071

1548 No. 6151.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee District of Nos. 7987, 7988, 7989, 7990 dated the 25th day of July 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing six hundred and thirty nine acres lying in the County of Monroe in the said district situate in the 7 range east of the basis line fractional township two and twenty ninth section being the southwest fractional and southeast, northeast, and northwest quarters of said section—beginning at the so. east corner of said quarter with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenences to the said Francis W. Lea and his heirs forever.

In witness whereof *Jnoes* C. Jones governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred and forty two and of American Independence the sixty seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 October 1842.

The within is a true copy from the records of my office. Cleveland, Tennessee Jan. 24th 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

1549 STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 57—registered in Book O, page 479.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tenn.

No. 6150.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee District of Nos. 7991, 1992, 7993 & 7994, dated the 25th day of July 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing six hundred and fourteen acres lying in the County of Monroe in said district situate in the 7 range east of the basis line fractional township two and thirtieth (30) section, being the southwest and southeast fractional and northeast & northwest quarter- of said section—beginning at the so. east corner of said quarter—with its appurtenances— to have and to hold the said tract or parcel of land, with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6 day of September in the year of our Lord one thousand eight hundred and forty two, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

1550 JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th October 1842.

The within is a true copy from the records of my office January 24, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56; registered in Book O page 475.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5969.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. — dated the 25th day of Jul*a* 1842 by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing ninety acres, lying in the County of Monroe, in the said district situate in the 7th range east of the basis line fractional township two and thirty second section, being the northeast fractional quarter of said section—beginning at the — corner of said quarter, with its appurtenances—

1551 to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred and forty, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Le*ath had* title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded the 1st October *k*842.

The within is a true copy from the records in my office Cleveland, Tennessee Jan. 24, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A page 56; registered in Book O page 473.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County Tennessee.

No. 5965.

The State of Tennessee to all to whom these presents shall come, Greeting:

1552 Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. 7985 dated

the 25th day of July 1842, by Francis W. Lea, general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land containing one hundred and twenty 5 acres, lying in the County of Monroe, in the said district, situate in the 7 range east of the basis line fractional town-ship two and thirty second section, being the northwest fractional quarter of said section — beginning at the northwest corner of said fractional quarter—with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof James C. Jones, Governor of the State of Tennessee hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 6th day of September in the year of our Lord one thousand eight hundred forty two, and of American Independence the sixty-seventh.

By the Governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office. Cleveland, Tennessee Jan. 24, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE,
Monroe County:

NOVEMBER 8TH, AT 12 O'CLOCK A. M., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Regis-
1553 tered in Book O, page 472.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

End of Exhibit No. 2.

1554 *Agreement.*

By consent of parties the further taking of depositions in this case by Defendant, State of Tennessee, before the Clerk of the Supreme Court of Tennessee, at Knoxville, Tenn. is continued until Tuesday Jan. 3, 1911 when the further taking of depositions will be resumed before the Clerk of the Supreme Court of Tennessee at Knoxville, Tenn. in the Supreme Court Room; with the further agreement and understanding that said Defendant State of Ten-

nessee shall have the right to take depositions in the City of Washington, D. C. before that date upon convenient notice to Counsel for Complainant, State of North Carolina; and with the further understanding and agreement that the time for taking proof and designating proof from the Hebard-Belding Record is extended in favor of the State of Tennessee until February 1, 1911. The depositions when resumed at Knoxville, Tenn., on Tuesday Jan. 3, 1911 shall be continued from day to day and upon such adjournments as may be made until the completion thereof.

Certified to

S. E. CLEAGE,
Supreme Court Clerk.

1555 In the Supreme Court of the United States.

No. —, Original.

THE STATE OF NORTH CAROLINA
against
THE STATE OF TENNESSEE.

STATE OF TENNESSE,
County of Knox:

I, Samuel E. Cleage, Clerk of the Supreme Court of the State of Tennessee, and as such acting as Commissioner to take depositions in the above entitled cause, do hereby certify that the witnesses whose testimony appear in this volume of testimony, to-wit, James L. Nelson, Pleas Henry, Milton Williams, Onley Williams, Wm. R. Carringer, H. H. Miller, A. C. Williams, Robert Grant, John W. Stratton, D. B. Burns and Charles Seymour personally appeared before me in the Supreme Court room at Knoxville on the days stated, and were by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that they did depose to the matters in their respective depositions set forth, and did, as certified to, either subscribe their names in person to said depositions or their names were subscribed thereto by myself under the agreement of counsel for both parties, and did file the exhibits called for in each of said depositions; and that the counsel for the complainant State of North Carolina and the defendant State of Tennessee did make the several agreements set forth in this volume of testimony and certified to by me; and I further certify that counsel for complainant and defendant appeared on behalf of said complainant and defendant as stated in this volume of testimony.

In witness whereof, I have hereunto set my hand and seal on this the 26th day of December, 1911.

SAMUEL E. CLEAGE,
Clerk Supreme Court of Tennessee.

1556 In the Supreme Court of the United States.

THE STATE OF NORTH CAROLINA, Complainant,
against
THE STATE OF TENNESSEE, Defendant.

Pursuant to the hour of adjournment on the 2nd day of December, 1910, by agreement of parties the taking of depositions in the above entitled cause on behalf of the State of Tennessee was resumed before the Clerk of the Supreme Court of the State of Tennessee at the chambers of the Supreme Court in the City of Knoxville, Tennessee, on this the 3rd day of January, 1911.

There appearing for the State of North Carolina: C. B. Matthews, Esq., Ben Posey, Esq., (Mr. W. R. Hopkins).

And for the State of Tennessee: Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

TUESDAY, *January 3rd*, 1911.

JOHN H. HOWARD, the first witness having been duly sworn, deposed and said:

Direct examination by CHAS. T. CATES, JR., Esq., on behalf of the defendant, State of Tennessee:

Q. 1. Your name is John H. Howard?
A. Yes sir.
Q. 2. Please state your age and place of residence?
A. I am 62 years old and live in Blount County, Ten-
1557 nessee, in the 17th District on the Little Tennessee River.
Q. 3. As I understand it, the 17th Civil District of Blount County is in the extreme Southeastern corner of that county?
A. Yes sir.
Q. 4. And borders on North Carolina on the East and is divided from Monroe County on the South and Southwest by the Little Tennessee River?
A. Yes sir.
Q. 5. How long have you lived there, Mr. Howard?
A. I think it is 43 years.
Q. 6. You own property there?
A. Yes sir.
Q. 7. A farm?
A. Yes sir.
Q. 8. How much?
A. The old original tract was 12,000 acres.
Q. 9. You have recently sold your farm to some kind of a power company?
A. Yes sir.
Q. 10. How far was the house where you lived from the river?
A. Something like a quarter.
Q. 11. Was your home above or below the mouth of Telassee?

A. Telassee Creek you speak of?

Q. 12. Yes sir.

A. It is above. The creek comes in opposite the farm about two-thirds of the way down through the farm.

Q. 13. On the South side of the river?

A. Yes sir.

Q. 14. And you also lived above where Abrams Creek run into the Little Tennessee River?

A. Yes sir, some five miles.

Q. 15. About how far from the boundary line—between the boundary line between North -- and Tennessee was your home, Mr. Howard?

A. Well to go the road that run across into North Carolina they call it nine miles, the uproad.

1558 Q. 16. You mean by that the so-called Turnpike?

A. The so-called Turnpike.

Q. 17. Running from Blount County into what is now Graham County, North Carolina?

A. Yes sir.

Q. 18. Did any part of your farm run over into Monroe County?

A. No sir.

Q. 19. Mr. Howard were you acquainted with a man by the name of Jack Milligan, or as it is sometimes called Milliken, who at one time lived in Monroe County?

A. Yes sir, I knew him.

Q. 20. How long did you know him?

A. Well I expect I knew him something like 20 years.

Q. 21. Where did he live?

A. He lived just across the river from the other side of my farm.

Q. 22. He lived in Monroe County just across the river from where you lived in Blount?

A. Yes sir.

Q. 23. Is he living or dead?

A. He is dead.

Q. 24. How long has he been dead?

A. Well to the best of my recollection it must be about fifteen years.

Q. 25. Was he living over there in Monroe County at the place that you have described when you moved up there to your home on the Blount County side?

A. Yes sir.

Q. 26. So you became acquainted with him something like 35 or 40 years ago?

A. Yes sir, it has been 40 because I got acquainted with him as soon as I went up there and it has been about 42 or 43 years, I don't recollect which it was since I went there.

Q. 27. Now when you became acquainted with Mr. Milligan, was he a young man or an old man?

A. No sir, he was an old man, what you might call an old man.

Q. 28. How old would you say he was when you first

1559 became acquainted with him some 40 years ago—what is your best judgment about that?

A. Why I would think he was something near 50.

Q. 29. I will ask you to state, Mr. Howard, whether you ever heard Mr. Milligan say anything about the location of the State Line immediately South of the Little Tennessee River and, if so, what did he say?

Mr. MATTHEWS: We object to that on the part of the State of North Carolina as incompetent and irrelevant and hearsay.

A. I heard him talking at one time and he just remarked that the line run from the top of the Hangover down into the Slick Rock Gap with the high tops and down into the Little Tennessee River is what I heard him say as well as I recollect.

Mr. MATTHEWS: I object to this further because I presume it is in contradiction of what other witnesses who testified as to what Milligan said as to the State Line.

Q. 30. Now let me see if I understand you—you have heard Milligan say that the State Line run over Hangover Mountain and the high points down to Slick Rock Gap and followed the main ridge from Slick Rock Gap to the Little Tennessee River?

A. Yes sir.

Q. 31. The Hangover Mountain was a noted mountain in that part of the country, was it not, Mr. Howard?

A. Yes sir.

Q. 32. Visible from afar off?

A. Yes sir.

Q. 33. I will ask you to state whether you were ever on Hangover Mountain?

A. No sir.

Q. 34. Or Slick Rock Gap?

A. I was in Slick Rock Gap one time, I reckon, I am not positive whether it was Slick Rock Gap. I went through a gap over there once and it was a gap and I take it it was Slick Rock Gap, but I won't be positive it was Slick Rock Gap.

1560 Cross-examination by Mr. MATTHEWS, on behalf of the complainant, State of North Carolina:

X Q. 1. Where did this conversation occur, Mr. Howard, with Mr. Milligan?

A. It was over on his side of the river from my place.

X Q. 2. At his house?

A. No sir, it was not at his house, down in his field on the river bank.

X Q. 3. And how far were you from the Hangover or Slick Rock Creek, whichever may be the boundary line, at the time?

A. I don't know how far they called it, probably 12 miles.

X Q. 4. And what was the occasion of the conversation—what brought it up?

A. I don't know that I can tell you anything about it. I just crossed the river in a vessel and he and these parties were there

talking and they was talking when I went up to them and I don't know what started the conversation.

X Q. 5. You didn't hear the whole conversation between them?

A. No sir. When I crossed over and went up on the bank they was talking about it.

X Q. 6. And had the subject of where the State Line was ever excited your attention before that?

A. No sir.

X Q. 7. Or since until this conversation?

A. No sir, not until this conversation got up between these people.

X Q. 8. And can you remember any of the other conversation at all?

A. No sir, I just stayed a few minutes and I turned and went back.

X Q. 9. And before that was said or afterwards?

A. No sir.

X Q. 10. When was this conversation, Mr. Howard?

A. Well I don't know that I could tell you just when it was, just shortly after I went up on the river there, probably been 40 years or more ago.

X Q. 11. And you found them standing there when you came up to them?

A. Yes sir when I came up they was on the opposite side of the river.

X Q. 12. They had been in conversation prior to your coming there?

1561 A. Yes sir I suppose so.

X Q. 13. And how long did you stay with them?

A. I was only on the bank just a few minutes.

X Q. 14. You left and left them together, did you?

A. Yes sir.

X Q. 15. And you are able to swear from the portion of the conversation that you heard that Mr. Milligan wasn't telling them what somebody else was claiming to have said?

A. I couldn't tell you that what their conversation might have been before I went up there. I just heard that much of it.

X Q. 16. He didn't put it that "I say"?

A. No sir.

X Q. 17. Did you hear words signifying that either he or somebody else said that the State Line run over the Hangover to Slick Rock Gap and then by the main ridge to the river?

A. Yes sir that is what he said.

X Q. 18. Now do you know where Slick Rock Ridge is?

A. No sir.

X Q. 19. Do you know the trend of those mountains from Hao along towards the Tennessee River coming North or Northeast?

A. No sir. I never was on them.

X Q. 20. You don't know what ridge that is that runs off towards Cheoah River?

A. No sir.

X Q. 21. Do you know the character of the mountains or hills

from Hao towards the Tennessee River bluffing off at the Tennessee River?

A. No sir I don't know anything about them.

X Q. 22. Did you ever hear of Virgil Grant?

A. Yes sir I am acquainted with Virgil Grant.

X Q. 23. How long have you known him?

A. Some 20 odd years I reckon.

X Q. 24. Where does he live?

A. He lives in Monroe County.

X Q. 25. Has he occupied any official position there?

1562 A. Justice of the Peace.

X Q. 26. How long has he been a Justice of the Peace?

A. Well sir I can't tell you.

X Q. 27. Hasn't he been a member of the legislature too?

A. Yes sir, at one time.

X Q. 28. What is his character as to truth and veracity?

A. Good as far as I know.

X Q. 29. Man of standing?

A. Yes sir.

X Q. 30. Is he a property owner?

A. Yes sir.

X Q. 31. So far as you know he has always lived in Monroe County?

A. No sir.

X Q. 32. Where die he live before that?

A. He came from North Carolina.

X Q. 33. About how long ago would you say?

A. Must have been 20 years or more.

X Q. 34. Since that he has lived continuously in Monroe County?

A. He lived in Blount County a while and then he lived in Monroe County.

X Q. 35. Well Grant is an intelligent man, isn't he?

A. Yes sir.

X Q. 36. How old a man is he now?

A. Well I don't know, I would have to kinder guess at that.

X Q. 37. Well just as you did the other, your best judgment?

A. I would take him to be something over, I mean something near 50 years old.

X Q. 38. Man of good memory, you would say, wouldn't you?

A. Yes sir, I think he is.

X Q. 39. And if he said that Milligan told him where this State Line was different from this would you believe him or not?

A. Well, I don't know that I would have any right to doubt what he said about it. Always found him straight in every thing that I ever had to do with him.

1563 X Q. 40. And you don't think that Milligan was a man that would tell an untruth knowingly, do you?

A. I don't think he would.

X Q. 41. And be so unintelligent as to tell different stories at different times?

A. No sir, I think not.

X Q. 42. You say so far as Slick Rock Gap was concerned that you might have been in it once but you didn't know whether you were or not, you couldn't tell?

A. There was three of us together, and I don't suppose either of us knew where Slick Rock Gap was at the time.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 1. Mr. Howard, you said something about some men being with Milligan when you heard him say what you detailed in your original examination in reference to the State Line being over Hangover. Do you know who those men were?

A. I couldn't tell you now who they were.

R. D. 2. Did I ask you how long after you moved up into that country it was before you heard that conversation, or do you recall?

A. I don't know whether you asked me the question or not. I don't recollect whether you did. I think though you did, and I think I said about two or three years.

R. D. 3. After you moved up there?

A. Yes sir.

R. D. 4. On cross-examination you were asked by counsel about what Milligan said, or what you heard Milligan say, and as I recollect the language of the question was Milligan didn't put it "I say so and so." Now just in your own way give as nearly as you can what Milligan did say?

1564 A. When I went up on the bank to where they was, they was talking about the State Line, and he just remarked that the State Line run over the Hangover down into the Slick Rock Gap and down with the main ridge down to the river.

R. D. 5. Now at the place where they were talking were they in view of Hangover?

A. I don't think they was, but I won't be positive, but you can see Hangover from a great many places from the river. I didn't look and I couldn't tell you. In a great many places you can see the Hangover from all up and down the river, and I wouldn't say that you could see it from where we was at from that particular place. A lots of places all along the river from where you can see the Hangover.

R. D. 6. At the time it didn't occur to you that there might be any question about the matter thereafter?

Mr. MATTHEWS: We object to that.

The WITNESS: I made a mistake in that land business. It was 1,200 acres and I said 12,000 acres.

R. D. 7. That is your farm?

A. Yes sir.

And further deponent saith not.

1 day and 92 miles.

1565 BEN POSEY, Esq., the next witness for the defendant, State of Tennessee, having been duly sworn, deposed and said:

Direct examination by Gen. CATES on behalf of the defendant, State of Tennessee:

Q. 1. You are an attorney at law, Mr. Posey?

A. Yes sir.

Q. 2. One of the counsel for North Carolina in this case?

A. Yes sir.

Q. 3. Were you at one time a member of the General Assembly of North Carolina?

A. Yes sir, in 1893 I was in the Senate of the General Assembly.

Q. 4. Was a resolution passed during that session of the legislature of North Carolina about surveying out the lines between the States of North Carolina and Tennessee South of the Little Tennessee River?

A. There was a resolution.

Mr. MATTHEWS: We object to that on the ground that the public statute book would show, I judge. That is the best evidence.

A. There was a resolution passed asking the Governor to appoint somebody to try to locate that line. There was some trouble between the Fains and these people about that country and Slick Rock, and asking the Governor to appoint somebody to locate that line between the Tennessee River and the Hiawassee River and the Unaka Road at least.

Q. 5. At that time the immediate action or dispute was the conflicting claims down on the headwaters of Tellico between the Fains and Stevensons?

A. I think that was it.

Q. 6. Now in consequence of that authority, did the Governor employ somebody?

A. Yes sir, the Governor employed me to look after it and have it surveyed, at least hire a surveyor and have it located.

1566 Q. 7. Did you employ some one to do that surveying?

A. Yes sir.

Q. 8. Who was that?

A. I employed John R. McClellan.

Q. 9. Where did he live?

A. Murphy.

Q. 10. Did he make a survey?

A. Yes sir, he did, he so reported to me. I wasn't on the survey with him.

Q. 11. You say he made a written report of what he did?

A. Yes, he made a written report, I think, to the Governor—made a written report through me to the Governor.

Q. 12. Do you know where that report is?

A. I don't know unless it is in some of the archives at Raleigh, and I think he made a map that accompanied it.

Q. 13. Do you know Mr. Posey whether or not he set up stones along the survey made by him?

A. Maybe I think he did at mile posts was the report as I understood it, unless he found a tree that was in the way. I think he reported that he put up mile stones. I am not sure about that.

Mr. MATTHEWS: We object to this. McClellan is still living and is still at Murphy.

Q. 14. He hasn't been introduced by North Carolina in this case, has he?

A. No sir, I think not, not at any time when I was present. I don't think they had him at Asheville I was not there but I don't think they had him there. I looked over what he sent to the Governor and I think he did.

Q. 15. You didn't keep a copy of it?

A. No sir.

Q. 16. But you are pretty sure that he sent a copy of it to the Governor of North Carolina?

A. Yes sir I am pretty sure he did, that is where it would have gone.

Q. 17. That report hasn't been offered by North Carolina
1567 as evidence in this case?

A. I think his map has, but I am not sure about his report.

Q. 18. Now Mr. Posey if you know from hearing him say, or from your own recollection of his report, I will ask you to state if up there in that Slick Rock country he didn't run the line down over what is known as Little Fodder Stack and Stiff Knee to the Little Tennessee River?

Mr. MATTHEWS: We object to this as calling for hearsay evidence.

A. I don't know about Stiff Knee, but I think I heard him speak of Little Fodder Stack. I know very little about that country and from those names he gave I wouldn't undertake to say which way he did run it. I afterwards became interested in the Tellico River country, but I never appeared in any of those suits that involved the Slick Rock country in my life.

Gen. CATES: The State of Tennessee now serves notice on the State of North Carolina to produce for examination the report made by John R. McClellan as the agent of the State of North Carolina under the employment detailed by the witness, Mr. Posey.

Q. 19. As I understood you, you said that the survey made by McClellan was in 1893?

A. That is my recollection. It was made following the session of the legislature of 1893, and it was either in 1893 or 1894, but I think it was in 1893. That is my recollection.

Cross-examination by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X. Q. 1. Wasn't there afterwards in 1897 a commission appointed to run or re-run that line?

A. I don't know, I think perhaps there was somebody connected

with Hyde in this State (Tennessee) to run that line, but I don't know how that is, but I think that was after McClellan surveyed.

X Q. 2. Do you recollect of a surveyor from Cherokee and Graham counties being designated to run the line in 1897?

A. I think perhaps the surveyor Hyde and perhaps Lovingood the surveyor of Cherokee to act with somebody from Tennessee.

1568 X Q. 3. That was about in 1897?

A. Yes, sir, somewhere near there.

X Q. 4. What was the scope of Milligan's duties—you say you employed him?

A. Only to find, to locate if he could where the commissioners located the line in 1821 between the two States.

X Q. 5. What part of that line?

A. Between the Hiawassee and the Tennessee river, and they begun at the Hiawassee River and run East. I think that they begun at the Hiawassee or the Unicoy Road. I think it was at the Hiawassee that they begun.

X Q. 6. And the principal occasion you say was on account of the dispute that originated around Tellico?

A. That is how I came to get the resolution passed.

X Q. 7. Was there any dispute at that time pending within your knowledge over the Slick Rock country?

A. Not that I remember sir. I don't know anything about it if there was.

And further this deponent saith not.

BEN POSEY.

Sworn to before me Dec. 2nd 1910.

S. E. CLEAGE,
Supreme Court Clerk.

1569 ROBERT T. QUARLES, the next witness for the defendant, State of Tennessee, having been first duly sworn, deposed and said:

Direct examination by Gen. CATES, on behalf of the defendant, State of Tennessee:

Q. 1. Please give your name, age and place of residence?

A. My name is Robert T. Quarles; I live in Nashville, Tenn. and I am 60 years old.

Q. 2. What office do you hold, if any, Mr. Quarles?

A. I am State Archivist.

Q. 3. With an office in the State capitol at Nashville?

A. Yes sir.

Q. 4. When was that office created?

Q. That was created in the early part of '93.

Q. 5. Of 1893 or 1903?

A. In the early part of 1903.

Q. 6. I will ask you to state whether or not all papers and docu

ments relating to the State government in regard to matters not now at this time current are in charge of you as the Archivist of the State?

A. Yes sir.

Q. 7. I believe the State Archivist is connected in some way with the office of Secretary of State?

A. Yes sir, the papers are germane, many of them. He has part of sets and I have part of sets.

Q. 8. Now I will ask you to state whether there is in your custody as State Archivist a copy of the running of the boundary line between North Carolina and Tennessee by the commissioners of said States in 1799?

A. Yes sir.

Q. 9. In my last question I used the word "copy," when I had in mind the map itself as filed in your office. Now I ask you about the map itself?

1570 A. The map is the original map filed by the commissioners. They were made in duplicate, one for North Carolina and one for Tennessee and this is the Tennessee map, the map furnished by the commissioners to the State of Tennessee of that part of the line.

Q. 10. Is that map here before you?

A. Yes sir.

Q. 11. Brought by you to Knoxville for the purposes of this examination?

A. Yes sir.

Gen. CATES: I will state to the counsel for North Carolina that this map is here subject to such examination as they may desire to make of it.

Q. 12. Now Mr. Quarles I will ask you to have a copy of this map made and file it as Exhibit No. 1 to your deposition?

A. I will do so.

(Here follows map marked Ex. 1 Quarles, p. 1570*a*.)

Q. 13. And inasmuch as North Carolina has served notice upon Tennessee to produce on the hearing of this case in the Supreme Court of the United States the map of 1821, so-called, I will ask you to also have this original map of 1799 there for examination?

A. I will do so.

Q. 14. Now Mr. Quarles, I will ask you whether the report of the commissioners of 1799 is on file in your office?

A. Yes sir.

Q. 15. Have you the original report here?

A. Yes sir, it is here.

Q. 16. I will ask you to state whether that report shows or is accompanied by the courses and distances?

A. Yes sir.

Q. 17. By which that line of 1799 was run?

A. Yes sir.

Q. 18. I will ask you to have made a copy of said report, including the field notes, and file it as Exhibit No. 2 to this deposition.

A. I will do so.

1571 Gen. CATES: I will state to counsel for North Carolina that the original report of the running in 1799 is here subject to their examination.

Q. 19. As I understand it, Mr. Quarles, this map of 1799 shows the running of the upper or Northern part of the boundary line between North Carolina and Tennessee and down to that point where the commissioners of the two States commenced to run in 1821?

A. Yes sir.

Q. 20. Mr. Quarles, you brought with you the plat or map that is supposed to show the running of the State Line by the commissioners of North Carolina and Tennessee in 1821?

A. Yes sir.

Q. 21. That is the plot or map before you here on the table?

A. Yes sir.

Q. 22. Tennessee has been notified to produce that map on the hearing of this cause in the Supreme Court of the United States, and I will now request you to have that map there.

A. It shall be done sir.

Q. 23. Now, Mr. Quarles, please state the circumstances under which this map of 1821 was found by you, and when it was found?

A. The map, the papers, were in the basement of the capitol in the crypt just outside of the capitol proper on the West side of the capitol immediately under the portico as you come into the building before you get into the cell of the building proper and it was practically outside and it was full of rubbish where this stuff was placed and it had many things on them and it was in all sorts of condition that you could think of, principally those that were under the eaves. I searched first for the Constitution of 1796 of the State of Tennessee.

Q. 24. Did you find that there?

A. I found that there and that was carried into the Secretary of State's office and dried out and that necessitated the going to work

at once on those papers and I went to work and found this map in a barrel of disinfectant and cotton seed lint and the cotton
1572 and lint together and the seed together and a bucket of ashes on the top and I simply turned the barrel over not expecting to find anything and I found this and I took that then and carried it into the department and took care of it. I didn't think a great deal of it. I couldn't state the exact date of it, but it was between the latter part of December, 1903, and sometime in the early part of February, 1904. That is as near as I can get to it and in moving those papers during that period I found it.

Q. 25. Did you find the report of the commissioners referring to the running of that line along with this map?

A. No sir, I never found the field notes with the map of 1821.

Q. 26. I had reference to the report of the commissioners?

A. Yes sir, I found that at the same time.

Q. 27. Was it along with the map?

A. In the same receptacle, both came out of the same bundle that came untied.

Q. 28. Is the paper which I here hand you what you call the report of the commissioners purporting to be signed by Smith, Allen and Perry on the part of Tennessee, and Mebane, Stokes and Love on the part of the State of North Carolina?

A. Yes sir.

Q. 29. I will ask you to have made a true copy of this report and file it as Exhibit No. 3 to your deposition.

A. I will do so. Wish that certified to by the Secretary of State?

Gen. CATES: Yes, I want all those papers certified.

Q. 30. Now Mr. Quarles, did you find any further report by the commissioners of both States than the one you have presented here, a copy of which is to be filed as Exhibit No. 3 to your deposition?

A. No sir. I found that one as a report.

Q. 31. And did not find any report showing the courses and distances of that line of 1821 further than that set out in this report, a copy of which you will file as Exhibit No. 3?

A. No sir.

Q. 32. Is there any record in your office or that of the
1573 Secretary of State of any such report showing courses and distances by which that line was run?

A. There is not.

Q. 33. Is there any record there so far as known to you which would show that any such report was ever filed with the State of Tennessee?

A. No sir, not so far as I know.

Q. 34. That is a report showing the courses and distances by which that line was run?

A. No sir.

Q. 35. Now you have told us about finding this map of 1821 in a barrel containing waste and other material in the basement of the capitol—where was this map of 1799 found?

A. The map of 1799 was found in the same locality, but not in

the same condition. It was found in a bundle tied up with some papers relating to the line and relating to the pay of the commissioners and it was still tied up and it had the field notes tied up with it, but it was in the basement.

Q. 36. I notice, Mr. Quarles, that both of these maps in the condition presented here by you appear to have a linen cloth on the backs, or to phrase it differently, appear to be mounted on linen cloth. I will ask you to state whether or not these maps were so mounted with linen cloth on their backs when you found them?

A. They were not. I mounted them myself to preserve the maps.

Q. 37. Now referring particularly to this map of 1821—I will ask you to state whether or not when you found it the map was in one piece, or whether or not it was broken into pieces?

A. It was one piece just as you see it now. It has never been apart since I have had it. The map when found, General, was folded about the size of an ordinary public document, folded up, not rolled, and as you see it there now the creases are there and it was ironed out but you can see from the creases it was folded into a bundle about four or five inches wide and may be ten inches long.

Q. 38. So that folding accounts for the creases which appear on the map?

A. That is right.

1574 Q. 39. Do you know Mr. W. R. Hopkins?

A. Yes sir.

Q. 40. I will ask you to state whether or not you have shown him this original map at Nashville?

A. Yes sir.

Q. 41. Furnished him copies of it?

A. Yes sir.

Q. 42. How long ago?

A. Well now Mr. Hopkins I believe was furnished a photographic reproduction of this map is the only one I had directly made for Mr. Hopkins. That was made by a photographer of Nashville, made by Thurst of Nashville. That is the only one I had made for him, but the map has been copied for various people thirty odd times I think.

Q. 43. Now is there anything more Mr. Quarles about either of these documents and particularly this map of 1821 that you care to state, or that may be of interest to the determination of the question at issue in this case?

A. Only the fact that the papers have never been out of my possession since the day I found them and when photographs are made they are made in my presence and they have been absolutely in my custody since they were found.

Q. 44. Personally you don't know anything about the topography as shown by this map?

A. Not a thing in the world.

Cross-examination by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 1. Mr. Quarles, the map which you have designated as the map of 1799, commences at the extreme Northeast end of the State Line, does it not?

A. Yes sir, at what is called the North point.

X Q. 2. And it commences near the Pigeon River?

1575 A. Big Pigeon River.

X Q. 3. But the map of 1821 commences at Pigeon River?

A. Yes sir.

X Q. 4. And it takes the two whole maps together to make the State Line between North Carolina and Tennessee?

A. Yes sir.

X Q. 5. Now that map of 1821, that is the original map that the commissioners who made the survey deposited in your office?

A. As the certified copy signed by them.

X Q. 6. Isn't it the original map signed by them?

A. The original certified map.

X Q. 7. In the case of the map of 1799, which relates to the part of the line Northeast of Pigeon River—you found not only the written report of the commissioners but also their field notes?

A. Yes sir.

X Q. 8. That is what you understood—field notes—when asked about courses and distances?

A. Yes sir.

X Q. 9. Were these field notes and the report attached to each other?

A. They were tied in the same bundle, that is the 1799.

X Q. 10. Isn't it one document—aren't the report and the field notes one document?

A. Yes sir, that is one document and it was with the map.

X Q. 11. But so far as the field notes and the written report accompanying them those are one document?

A. Those in one bundle, that is one document.

X Q. 12. Now in relation to the map of 1821, you found a written report but you didn't find any field notes?

A. No sir.

X Q. 13. Did you ever discover any evidence, physical or otherwise, from that report of the commissioners of 1821 that any field notes had ever been attached to them?

A. I have never found any trace of them or any intima-

1576 tion any where that they were ever filed.

X Q. 14. There was no public book kept at the time in which was registered even the fact of filing the papers?

A. No sir.

X Q. 15. You know what has been the custom in your departments there about that, about registering in your departments the filing of public documents?

A. Yes sir.

X Q. 16. What has been that?

A. As far as the department is concerned now, that is with me, there is a catalogue made of it so you can refer to it at any time.

X Q. 17. Do you know back at that date from tradition or seeing any public prints of public documents that was printed whether that custom prevailed at that time?

A. Not so far as I know, except the papers were put into chronological order in the Secretary of State's office, which was the archives of the State.

X Q. 18. Now some controversy has arisen with the line North of the Pigeon River, one or two?

A. Yes sir.

X Q. 19. And the documents which consisted of the map and the field notes have twice determined those controversies?

A. Yes sir on two occasions that has occurred.

X Q. 20. So far as you know there has been no difficulty from those field notes in determining those controversies?

A. Not so far as I know.

X Q. 21. So far as the papers relating to the survey of 1799 are concerned, doesn't it appear from them that they are copies certified from Raleigh?

A. Well those copies that I have here, the map of 1799, both copies, were made in Raleigh. I think the commissioners finally met at Raleigh and the map was made there and this one filed with Tennessee was the original map of the line so far as Tennessee was concerned. The draftsman made them at the same time and sent Tennessee her's.

1577 X Q. 22. And the report the same?

A. The report the same way.

X Q. 23. In copying this report of the field notes you will copy the certificate to-?

A. I will copy the entire thing just as it stands.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 1. Now I had not examined this report of 1799 before, but I find on the last page of it the following:

"State of North Carolina, Secretary's Office.

10TH JULY, 1803.

This certifies that the foregoing contained in 27 pages is a true copy of the courses and distances of the boundary line between this State and the State of Tennessee together with the report of the commissioners and certificate and notes of the surveyors; and that the draft annexed to these sheets is also a copy of said boundary line: all of which was taken from the originals deposited in this office.

Given under my hand at Raleigh the date aforesaid.

(Signed) WILL WHITE, *Secretary.*"

A. That is true.

R. D. 2. Thus, as would seem to have been indicated by Mr. Matthews' question, this whole report and this map of 1799 is but

a copy furnished to the State of Tennessee from the records of North Carolina by the Secretary of State of that State?

A. That is right.

R. D. 3. Now Mr. Quarles, you were asked about some controversies at different times along the line shown by this map of 1799. Personally, you don't know what those controversies involved?

A. No sir. The surveyors of one or two counties came down to examine that map and the field notes relating to some courses and distances that they wanted to run out some deeds that they
1578 could not run out without knowing where the State line was.

R. D. 4. So you don't know what was in the controversy, or what was the determining factor in deciding it?

A. They simply wanted to examine the map to determine their conclusions.

Recross-examination by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 24. What you know from the tradition or from the history of your State, what was the standing of these people who made this report in 1821?

A. The commissioners who run the line?

X Q. 25. Yes sir, or the surveyors—what you know of them?

A. They were men of the highest integrity as far as history records them at all. They were men who were trusted in running this particular line and besides they were made commissioners of the land office and men of integrity and competency.

X Q. 26. And particularly do you remember or do you know anything of the history of Mr. Armstrong?

A. Yes sir. I believe that was the same Mr. Armstrong who was in charge of the Land Office for this particular section of East Tennessee and there was some trouble between him and North Carolina as to the removal of his records and he was sustained throughout in refusing to deliver to North Carolina the grants that were issued to Tennessee up to 1806.

X Q. 27. And does history say of him that he was competent and honest?

A. It don't say in so many words. He must have been trustworthy and competent or he would not have been placed there.

X Q. 28. Do you know whether he had anything to do with the running of the Ocoee Land District?

A. He had something perhaps to do with the running of the Hiawassee line. This is known as the Hiawassee Purchase Map. I have seen a letter that notes if he was not actually at work on that he was adviser at least.

X Q. 29. A letter from whom?

1579 A. A letter from one of the commissioners. The Government run that. That was an Indian line, the line that settled the line between the Indians whose title had not yet been extinguished.

X Q. 30. You know it runs from Monroe County clear down?

A. Yes sir.

X Q. 31. It was run as one survey, was it not?
A. Yes sir, entirely.
Gen. CATES: What line?
The WITNESS: The Hiawassee line, the purchase line, it does not touch this map at all.
X Q. 32. And did you find a map made by Armstrong of this Hiawassee purchase?
A. I can't say whether that map was made by Armstrong. I have that map though.
X Q. 33. Hasn't it Armstrong's name on it as adviser?
A. I don't recall that.
X Q. 36. Will you examine that please and furnish us a copy?
A. You have a photographic copy of that map. If you want that in evidence I have the map.
X Q. 37. There was a photograph taken of that?
A. Yes sir for Mr. W. R. Hopkins.
X Q. 38. And that photograph you say was taken in your presence and you know it to be correct?
A. I know it is a photographic reproduction of it and the plates was sent from Nashville and I don't think there was any change made of it.
X Q. 39. And the original reproduction was in your presence?
A. Yes sir.
X Q. 40. That letter that you speak of, will you furnish us a copy of that and file it as Exhibit No. 4 to your deposition?
A. Yes sir and as Exhibit No. 4. I am not sure that that letter will be of much use to you.
X Q. 41. We would like to have it.
A. I will hunt it up.
X Q. 42. Are you familiar with the Ocoee Land District as it was run originally?
1580 A. No sir. I only know it as it appears on the map. I find it in history but I have no actual knowledge of the country itself.
X Q. 43. That survey stopped at Slick Rock Creek, didn't it?
A. I am not right sure of that. I never looked at that map with a view of determining just where it started or terminated. I looked over that and put it away just as I did the others.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 5. Now Mr. Quarles, you have been asked about the connection of Robert Armstrong with surveys other than that of 1821, and you referred to him, as I understand it, having something to do with surveying the Hiawassee District?
A. Yes sir I think that is possible that while he may not have been actually in charge of the survey I think he was adviser to the Government which run that line. You see that line was run by the United States Government.
R. D. 6. You don't mean to say that Armstrong had anything to do with surveying out the Ocoee District, do you?
A. No, I do not.

R. D. 7. Now the Ocoee and Hiawassee Districts were entirely separate land districts in Tennessee, were they not?

A. Yes sir.

R. D. 8. And the Hiawassee District doesn't touch the boundary line anywhere between the Little Tennessee River and the Hiawassee River, does it?

A. I think not, no sir.

R. D. 9. Now Mr. Matthews asked you about a copy of a map—about a photographic copy of some map which you have furnished to Mr. Hopkins. Before closing your deposition I want you to send to Nashville and get the original map, photographic copy of which you furnished to Mr. Hopkins, and produce it here for our inspection and examination?

1581 A. All right, General, it can be done.

R. D. 10. Can you have it back here by Thursday morning?

A. Yes sir.

Gen. CATES: Then I will ask that the further taking of the deposition of this witness be adjourned until Thursday morning.

Recross-examination by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 44. Mr. Quarles, what is known as the Hiawassee purchase was a map that was made for the purpose of making a map for the land that was purchased from the Indians?

A. Simply separating the lands from the Indians in Tennessee and they were differentiating between the Indian lands and that was open for settlement.

X Q. 45. It was not a map of any land district?

A. It was the Hiawassee District. The Hiawassee Land Office was opened by Tennessee when she had a right to open it in 1806.

X Q. 46. By what Government was it made?

A. The United States Government.

X Q. 47. Isn't there a Hiawassee Land District just South of the Ocoee District as a State Land District?

A. That is what I speak of when I speak of the Hiawassee Land District. It is separate and apart from the Ocoee Land District.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 11. Now Mr. Quarles, Mr. Matthews or Mr. Hopkins, one or the other, asked you if the Hiawassee Land District wasn't South of the Ocoee District. You didn't mean to state that the

1582 Hiawassee Land District was South of the Ocoee?

A. I don't know how they lay. I didn't undertake to say how they lay.

R. D. 12. Now the map that I want you to have here on Thursday is the one a copy of which you furnished to Mr. Hopkins who is here present and who seems to remember that it had the name of Robert Armstrong somewhere on it?

A. Yes sir.

(Here follows map, marked Exhibit No. 5 to deposition of Rob't T. Quarles.)

MAPS

TOO

LARGE

FOR

FILMING

And further sayeth not.

ROBERT T. QUARRELS.

Sworn to before me Dec. 2nd. 1910.

S. E. CLEAGE,
Supreme Court Clerk.

January 3rd. 1911. at 12 o'clock M. the further taking of proof was adjourned to 2 o'clock P. M.

1583 STATE OF TENNESSEE.
Department of State:

To all to whom these presents shall come. Greeting:

I, Hallum W. Goodlow Secretary of State of the State of Tennessee do hereby certify that the annexed is a true copy of the notes of the courses and distances of the State line between Tennessee and North Carolina run in 1799 by Vance, McDowell & Matthews from the Virginia line to the high pinnacle of Smoky Mountain. The original of which is now on file and a matter of record in the Department of Archives, at the State Capitol, Nashville, Tennessee.

In testimony whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great seal of the State of Tennessee at the Department in the City of Nashville, this 25th day of August A. D. 1911.

[Seal of the State of Tennessee.]

HALLUM W. GOODLOE,
Secretary of State.

1584 EX. NO. 2 TO DEPOSITION OF ROBERT T. QUARLES.

The draft hereunto annexed is a representation of the boundary line between the States of North Carolina and Tennessee run under the direction of Joseph McDowell, Mussendine Matthews and David Vance Commissioners appointed for that Special purpose by an Act of the Legislature of North Carolina passed at Raleigh in the year of our Lord One thousand seven hundred and nin-ty six and run agreeably to the bounds pointed out by an Act of the assembly passed in the year of our Lord One thousand seven hundred and eighty nine entitled an act for the purpose of Ceeding to the United States of America certain Western lands therein described. The following is descriptive of the courses distances natural and artificial marks and boundaries of said line. The corner trees are distinguished by three chops and *and* a blaze above them. The line trees are also Distinguished by three Chops and a blaze below them.

On the 22nd day of May 1799 under the directions aforesaid began to extend said boundary line, Beginning on a Sugar tree and beech the latter of which is marked I. M. D. D. V. M. M. I. S. R. H. B. G. G. D. R. L. Together with a number of other trees

around that are marked. Standing in a low Gap of the Stone mountain where the Virginia line Crosses it between the heads of the Laurel fork of Holston river and the head of horsepen Creek or branch of New river about One and an half Miles South West of the White Top-ed mountain the Following Courses and distances Viz:—

1. S. 38. Wt. 68 poles to an higher eminence of the mountain
2. So. 41. E. 16 poles to a Chesnut
3. So. 88 E. 6 poles to a beech
4. So. 20. E. 70 poles to a high knob
5. So. 82. E. 10 poles along the same
6. So. 54. E. 6 poles to the place where the pond mountain intersects the Stone mountain

1585

7. S. 6. W. 16 poles
8. S. 26 W. 52 poles to a low Gap
9. S. 20 E. 45 poles
10. S. 11. W. 6 poles
11. S. 47 E. 24 poles down Steep Ground
12. S. 21 E. 22 poles
13. S. 1 E. 52 poles
14. S. 30 E. 14 poles on a low ridge
15. S. 19 W. 40 poles to an ash in the upper rye patch
16. S. 37 W. 40 poles thro the rye patch
17. S. 83. W. 84 poles to a knob
18. S. 64. W. 38 poles down the ridge
19. N. 85 W. 32 poles thro the thicket
20. N. 8 W. 36 poles over rocks
21. S. 24. W. 32 poles on a narrow mountain
22. S. 12. W. 14 poles
23. S. 14. E. 24 poles to a Chesnut
24. S. 56. E. 16 poles to a Gap between the branches of Laurel of Holston and Laurel of New river
25. S. 13. E. 59. poles through said gap
26. S. 83. E. 16 poles to a maple
27. S. 2. W. 60 poles to a beech
28. S. 23. W. 30 poles to a spanish oak
29. S. 10. W. 20 poles to a Spanish oak
30. S. 10. W. 44 poles to an ash
31. S. 21. E. 68 poles over high rocks
32. S. 61. W. 44 poles Crossing a hollow
33. S. 27. W. 28 poles to a hickory
34. S. 6. E. 12 poles
35. S. 22. E. 22 poles
36. S. 30. W. 46 poles down a knob
37. S. 34. E. 8 poles
38. S. 58. W. 44 poles Crossing a gap to spanish oak
39. S. 21½. W. 114 poles to a Chesnut
40. S. 1 W. 40 poles to a Chesnut on a Stony knob
41. S. 15. E. 84 poles along a stony mountain to a Spanish oak
42. S. 62. W. 28 poles through a Laurel thicket
43. S. 88. W. 50 poles to a white pine
44. N. 77 W. 42 poles to a Chesnut

45. S. 72. W. 10 poles to a low gap betwixt Laurel of Holston and Laurel of New river same course 50 poles to a sugar tree
46. S. 100 poles to a chesnut
47. S. 18 E. 24 poles to a hickory
48. S. 30. E. 36 poles to a hickory
49. S. 13. W. 30 poles to a red oak
50. S. 11. E. 36 poles to a red oak
51. S. 20. W. 56 poles to a chesnut
52. E. 10 poles to a mountain burch
53. S. 60 E. 20 poles to a chesnut
54. N. 77. E. 32 poles Descending a low gap to a sourwood
55. S. 43. E. 44 poles to 2 maples

1586

56. S. 61. E. 21 poles to a black oak in a low gap between the Iron work fork of Rones creek and Laurel of New river
57. S. 21. E. 92 poles to a chesnut
58. S. 5. E. 28 poles to a maple
59. S. 40. E. 52 poles thro the lowest part of a gap between the heads of the waters aforesaid
60. S. 6. W. 20 poles to a hickory
61. S. 41. E. 24 poles to a white oak
62. S. 11. E. 52 poles to a Spanish oak
63. S. 38. E. 26 poles to a chesnut
64. S. 20 E. 32 poles to a chesnut
65. S. 36 poles to a hickory
66. S. 80. E. 20 poles to a maple
67. S. 13. W. 14 poles to a cucumber
68. S. 9. E. 14 poles to a chesnut
69. S. 47 W. 20 poles to a maple
70. S. 15 E. 40 poles to a Hickory
71. S. 63. W. 26 poles
72. S. 20. W 16 poles to a white oak
73. S. 69. W. 10 poles to a dogwood
74. S. 10. W. 26 poles to a chesnut
75. S. 12. E. 20 poles to a Maple
76. S. 25. E. 30 poles to a Searvice
77. E. 22 poles to a dogwood
78. S. 15 E. 20 poles
79. S. 48 E. 20 poles to a Chesnut
80. S. 16. E. 20 poles to a Poplar
81. S. 5. E. 20 poles to a Chesnut
82. S. 23. E. 20 poles to a Service
83. S. 36. W. 34 poles to a White oak
84. S. 10. W. 38 poles to a White oak
85. S. 12. E. 26 poles to a White oak
86. S. 9. E. 40 poles to a Maple on a high knob
87. S. 40. E. 16 poles on a knob
88. S. 10. E. 12 poles
89. S. 30. E. 32 poles Crossing a Gap
90. S. 26. W. 10 poles up a knob
91. S. 24. E. 14 poles to a Spanish oak
92. S. 41. W. 16 poles to a Maple

93. S. 6. E. 20 poles to a chesnut
94. S. 8. W. 20 poles to a Chesnut
95. S. 21. E. 28. poles to a hickory
96. S. 41. E. 40 poles to a Chesnut
97. S. 48. poles to a hickory
98. S. 27. W. 28 poles to a hickory
99. S. 9. E. 78 poles to a Maple
100. S. 40. W. 60 poles to a Sugar tree
101. S. 22. W. 18 poles
102. S. 72. W. 8 poles to a Spanish oak
103. N. 85 W. 20 poles to a Maple
104. S. 39. W. 14 poles
105. S. 71. W. 34 poles to a mountain burch

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106. S. 53. W. 30 poles
107. S. 70. W. 38 poles to a Chesnut
108. W. 14 poles to a buckeye
109. S. 50. W. 18 poles
110. S. 10. W. 54 poles to a Burch
111. S. 50. W. 18 poles to a Chesnut
112. S. 65. W. 20 poles
113. S. 85. W. 18 poles
114. S. 58. W. 38 poles
115. S. 45. W. 10 poles
116. S. 60 W. 16 poles
117. S. 10 W. 52 poles
118. S. 60. W. 14 poles
119. S. 10. E. 32 poles
120. S. 18 poles to the Road in the deep gap at the head of the round about at the head of a branch of Rones Creek.
121. S. 16 W. 26 poles to a Chesnut
122. S. 13 E. 18 poles to a Cucumber on a steep mountain
123. S. 52. E. 28 poles ascending
124. S. 4. E. 88 poles to the top of a knob
125. S. 55. W. 20 poles
126. S. 40 W. 16 poles to a White oak
127. S. 51. W. 28 poles to rocks on the highest part of the knob.
128. S. 38. E. 44 poles
129. S. 47. E. 68 poles to a Gap
130. S. 10. W. 66 poles Crossing sd. Gap
131. S. 35. E. 30 poles to a Chesnut
132. S. 51. W. 104 poles to the top of a knob
133. S. 33. W. 104 poles to a Chesnut
134. S. 15. W. 46 poles in a Laurel thicket
135. S. 33. E. 12 poles in sd. thicket
136. S. 11. W. 48 poles thro said thicket
137. S. 31. W. 40 poles Crossing the gap between the head of the roaring fork of Rones Creek and the head of the Beaverdam
138. S. 14. W. 20 poles to a Cherry
139. S. 80. W. 20 poles up a spur
140. S. 65. W. 20 poles to a Buckeye.
141. N. 66. W. 12 poles to a hickory
142. S. 17. W. 40 poles to a Cherry
143. S. 64. W. 26 poles to a Sugar tree
144. S. 56. W. 32 poles to an Ashe
145. S. 2. W. 24 poles to a Chesnut

146. S. 42. W. 10 poles to a Chesnut
147. S. 60. W. 26 poles to a hickory
148. S. 3. W. 42 poles to a low gap betwix a branch of Beaverdam of New river and a branch of Rones Creek.

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149. S. 48. W. 20 poles to a Sugar tree
150. S. 74. W. 58 poles to an Ash
151. S. 10. W. 50 poles to a chesnut
152. S. 68. W. 20 poles to a Chesnut
153. N. 60. W. 16 poles to a Chesnut
154. N. 48. W. 34 poles to a Cherry on a knob
155. S. 58. W. 36 poles to a Chesnut
156. N. 83. W. 20 poles to a locust
157. S. 57. W. 24 poles to a cherry at Rones Creek path
158. S. 9. E. 14 poles along the ridge nearly with the path
159. S. 7. W. 20 poles with the path
160. S. 47. E. 10 poles with the path
161. S. 8. E. 16 poles to a Chesnut
162. S. 40. E. 40 poles to a hickory near the path aforesaid
163. S. 8. W. 20 poles to a chesnut
164. S. 12. W. 34 poles to a Spanish oak
165. S. 15. E. 20 poles leaving said path
166. S. 32. W. 24 poles to a Chesnut
167. S. 14. E. 56 poles to a chesnut
168. S. 89. E. 34 poles
169. S. 40. E. 10 poles to a Low gap between the head of the main Left hand fork of the Beaverdam fork of New river and the head of a branch of Hoskin's fork of Rones Creek
170. S. 9. W. 20 poles to a burch
171. S. 20. E. 20 poles to a sugar tree
172. S. 86 poles to a chesnut
173. S. 46. E. 18 poles to a sugar tree
174. E. 46 poles to a sugar tree
175. S. 77. E. 24 poles to a sugar tree
176. S. 60. E. 40 poles to a chesnut
177. S. 55. E. 20 poles to an Irnwood
178. S. 48. E. 60 poles to a hickory
179. S. 5. E. 36 poles to a Spanish oak
180. S. 45. W. 20 poles to a hickory
181. S. 27. W. 20 poles to a chesnut
182. S. 5. E. 100 poles to a Buckeye
183. S. 12. W. 30 poles to a sugar tree
184. S. 72. W. 46 poles to a Buckeye
185. S. 15. W. 64 poles to a Walnut
186. S. 72. E. 42 poles to a Spanish oak
187. S. 20 E. 60 poles to a Chesnut

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188. S. 50. E. 20 poles to an ashe
189. E. 32 poles

190. S. 3. E. 48 poles to a White thorn
191. S. 47. E. 20 poles
192. S. 73. E. 28 poles to a Chesnut
193. S. 27. E. 36 poles to a Sugar tree
194. S. 12. W. 40 poles to the deep gap of Hoskin's fork of the North fork of New river and a branch of Rones Creek at the foot of the upper high peak
195. S. 25. E. 28 poles to a buckeye
196. S. 37. E. 132 poles rising the upper high peak to a sugar tree
197. S. 10. W. 18 poles to a beech
198. S. 36. E. 18 poles to a sugar tree
199. S. 20. W. 14 poles to a Chesnut
200. S. 70 W. 34 poles to a Cherry
201. S. 20 poles to a locust
202. S. 25. E. 28 poles to a beech
203. S. 40. E. 36 poles
204. S. 12. W. 14 poles to a beech
205. S. 11. E. 24 poles to a beech
206. S. 45. E. 64 poles to a Buckeye.
207. S. 27. E. 12 poles to an Ashe
208. S. 55. E. 30 poles to a cherry
209. S. 70. E. 58 poles to a sugar tree
210. S. 50. E. 340 poles to the top of the upper high peak
211. S. 85. W. 280 poles to a Chesnut between the waters of Rones Creek and Cove Creek of Wattauga
212. W. 22 poles to a hickory
213. S. 62. W. 14 poles to a beech
214. N. 40. W. 32 poles to a sugar tree
215. N. 28. W. 20 poles to a sugar tree
216. N. 72. W. 32 poles to a beech
217. N. 55. W. 72 poles to a sugar tree
218. N. 75. W. 60 poles to a Burch
219. N. 70. W. 32 poles to a read oak
220. N. 60. W. 34 poles to a maple
221. W. 20 poles to a White oak
222. S. 77. W. 54 poles to a Maple
223. S. 56. W. 30 poles to a maple
224. S. 26 W. 60 poles to a low Gap between Rones Creek and Coves Creek at the road leading from New river up Mut camp Creek across Cove Creek to the Iron works
225. S. 69. W. 52 poles to a sugar tree.
226. S. 5. W. 14 poles to a chestnut
227. S. 73. W. 24 poles to a chesnut
228. S. 55. W. 22 poles to an chesnut
229. S. 77. W. 46 poles
230. N. 75. W. 14 poles to a Chesnut
231. N. 83. W. 20 poles
232. S. 69. W. 18 poles to a sugar tree

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233. S. 52. W. 14 poles to a high knob
234. S. 70. W. 10 poles to a sugar tree
235. S. 76. W. 12 poles to the top of high knob

236. S. 87. W. 14 poles to a Maple
237. N. 83. W. 20 poles to a Chesnut
238. N. 19. W. 16 poles to a chestnut
239. N. 58. W. 60 poles to a Maple
240. N. 78. W. 20 poles to a Chesnut
241. S. 89. W. 38 poles to a Chesnut
242. S. 63. W. 30 poles to a White oak
243. S. 45. W. 16 poles to a Chestnut
244. S. 63. W. 14 poles to a spanish oak
245. N. 61. W. 18 poles to a Cucumber
246. N. 67. W. 20 poles to a Spanish oak
247. N. 63. W. 16 poles to a red oak
248. N. 57. W. 20 poles to a sugar tree
249. N. 21. W. 16 poles
250. N. 52. W. 20 poles to a Chesnut.
251. N. 51. W. 40 poles to a sugar tree
252. S. 60 W. 22 poles to a chestnut
253. N. 61. W. 16 poles to a sugar tree
254. N. 45. W. 16 poles to a sugar tree
255. N. 35. W. 60 poles to a Butterwood
256. N. 60. W. 20 poles to a sugar tree
257. M. 57. W. 36 poles to a sugar tree
258. S. 59. W. 28 poles to a chesnut
259. S. 75. W. 38 poles to a sugar tree
260. W. 20 poles to a spanish oak
261. S. 73. W. 20 poles to a sugar tree
262. N. 83. W. 32 poles to a Butterwood
263. N. 55. W. 18 poles to a sugar tree
264. S. 89. W. 30 poles to a Maple at the forks of Cutbeards and Griffins road near Griffins Gap
265. N. 33. W. 34 poles to a butterwood
266. N. 14 poles to a Maple
267. N. 33, W. 32 poles to a sugar tree in the lowest part of a gap between the waters of Rones Creek and Beaverdam of Wattauga
268. N. 42 poles to a butterwood
269. N. 40 W. 16 poles to a burch
270. N. 50. W. 34 poles through an Laurel thicket to an Ivy
271. N. 20. W. 54 poles through said thicket on the top of the stone mountain.
272. S. 75. W. 32 poles to a cherry in a gap between Rones Creek and the branches of Wattauga
273. S. 45. W. 40 poles
274. S. 75. W. 52 poles to a maple
275. S. 42. W. 76 poles to a Maple near Griffins road
276. S. 55. W. 26 poles to a cherry
277. S. 70. W. 62 poles to a spanish oak
278. S. 40. W. 18 poles to a spanish osk
279. S. 30 W. 56 poles to a spanish oak.

1591

280. S. 40. W. 10 poles

281. S. 77. W. 36 poles from here the mountains appear so conspecuous that this place is called the Observitory
282. S. 70. W. 354 poles to a Spanish oak on a knob
283. S. 48. W. 12 poles
284. S. 45. W. 44 poles
285. S. 65. W. 10 poles
286. S. 58. W. 110 poles over rocks
287. S. 51. W. 18 poles to two rocks
288. S. 46. W. 8 poles over large rocks
289. S. 76. W. 16 poles over large rocks
290. S. 35. W. 16 poles ovet large rocks
291. S. 54. W. 42 poles, very brushy
292. S. 71. W. 14 poles over rocks
293. S. 42. W. 28 poles over rocks
294. S. 74. W. 42 poles thro Locusts
295. S. 31. W. 60 poles
296. S. 38. W. 180 poles
297. S. 33. W. 60 poles
298. S. 40 W. 120 poles
299. S. 17. W. 16 (or W. 36) poles
300. S. 48. W. 60 poles to the road at stair Gap
301. S. 61. W. 14 poles to a chesnut
302. S. 76. W. 26 poles to an oak
303. S. 64. W. 20 poles over rocks
304. S. 50. W. 24 poles over rocks
305. S. 29. W. 26 poles
306. S. 32. W. 46. poles
307. S. 60. W. 24 poles to the top of a knob
308. S. 70. W. 26 poles rocky and narrow
309. S. 77. W. 28 poles
310. S. 70. W. 32 poles rocky and narrow
311. S. 42. W. 44 poles down a knob
312. N. 80. W. 8 poles over rocks
313. S. 82. W. 16 poles descending over rocks
314. N. 65. W. 20 poles Descending
315. S. 76. W. 20 poles
316. S. 69. W. 16 poles to Ashers Old path from Wattauga
317. S. 60. W. 20 poles over high rocks
318. S. 43. W. [illegible] poles over high rocks
319. S. 50. W. 14 poles over rocks
320. S. 66. W. 14 poles over rocks
321. S. 41. W. 26 poles to a gap
322. S. 32½. W. 14 poles in a flat
323. S. 75. W. 24 poles up a ridge
324. S. 37. W. 42 poles to a chesnut
325. S. 86½. W. 10 poles to the top of a knob

1592 326. S. 24 West this is the direct course to the top of the Yellow mountain One Mile down the Stone mountain to a red oak 66 poles Further to Wattauga river crossing one Mile 294 poles up a very steep mountain to the top on this course two miles to a Chestnut oak near the head of a spring 60 poles further to a small branch 182 poles to top of a mountain called the Stone Mountain here commences a Laurel thicket 270 poles to a branch. Said thicket

continues to the end of the third Mile which is marked on a spruce pine thus 3. On the same Course One hundred and twenty four poles to the top of a spur of the Stone mountain leading to the Beach Mounatin four miles to a poplar marked thus 4. Same course continued crossing a branch th*uro*gh some Laurels and over some Chesnut knobs to the end of the 5th Mile which is marked on a beach thus 5 Miles, 1799. Same course 160 poles to a creek of Elk the sixth ends on a Chesnut marked thus 6. On the course aforesaid crossing a branch 162 poles to a Creek crossing same course continued the seventh mile ends on a chestnut oak near a creek. the same course continued crossing several branches and Laurel ridges (thro Laurel is scarcely a mark of distinction) 174 poles to Elk creek crossing and continuing as afore said over some high mountains crossing branches to the end of the eighth mile, course as aforesaid crossing several branches to a Gum marked 9. thus ends the ninth mile same course crossing a branch to a chesnut marked 10 thus ends the tenth mile, same course 58 poles to a Fork of Doe river this course continued the eleventh mile ends on a maple marked 11, on a spur of the Repskin mountain the same course the twelfth mile ends on a beech marked thus 12—course continued as aforesaid 229 poles to the top of a ridge leading from the Repskin mountain to the Yellow mountain dividing the waters of Towe river from those of Doe river Crossing a branch the thirteenth mile ends on a beech on the side of the Yellow mountain course as aforesaid the fourteenth mile ends on a beech on the side of the Yellow mountain. The whole distance on this course is fo*ur*teen miles and fifty poles to a beech near Brites road on the top of the Yellow mountain, half
1593 a mile No. West from the Yellow Spot on said mountain then along the mountain that divides the waters of Sugar creek of Towe river from those of Doe river.

327. N. 49. W. 20 poles
328. N. 56. W. 22 poles to a beech
329. N. 32. W. 20 poles
330. N. 18. W. 16 poles
331. N. 3. W. 12 poles
332. N. 36. W. 80 poles to a beech
333. N. 66. W. 24 poles
334. N. 88. W. 12 poles
335. S. 83. W. 10 poles
336. W. 10 poles to a buckeye
337. N. 83. W. 8 poles
338. N. 72. W. 22 poles
339. N. 66. W. 14 poles
340. N. 40. W. 48 poles
341. N. 48. W. 20 poles
342. N. 57. W. 46 poles to a beech
343. S. 85. W. 42 poles
344. N. 80 W. 28 poles to a black oak
345. S. 82. W. 30 poles to the wag*g*on road leading from Monganton to Jonesborough in a gap between the heads of sugar creek of Towe river and a branch of Doe river.
346. N. 80. W. 54 poles to a white how
347. S. 35. W. 44 poles to a beech
348. S. 23. W. 16 poles to a beech
349. S. 5. W. 34 poles to a beech

350. S. 12. E. 28 poles to a beech
351. S. 15. W. 20 poles to a beech
352. S. 35. W. 68 poles
353. S. 14. W. 30 poles
354. S. 34. W. 12 poles
355. S. 14. W. 66 poles to a Buckeye
356. N. 80. W. 20 poles
357. W. 28 poles to a beech
358. S. 55. W. 20 poles to a Beech
359. S. 75. W. 36 poles to a Beech
360. S. 39. W. 30 poles to a beech
361. S. 65. W. 24 poles
362. S. 30. W. 24 poles
363. S. 57. W. 16 poles
364. S. 80. W. 10 poles
365. S. 65. W. 12 poles
366. S. 25. W. 66 poles to a bunch of *of* black shoemake in the open ground on the top of the Rone mountain from this place set off S. 12½ E. 86 poles then observed the Grandfather mountain intersceting the yellow mountain bearing N. 83 E. the Table rock bearing S. 42 E. The Hawks bill bearing S. 44½ E. the end of the Lenoille Mountain bearing S. 19 E.
367. N. 35. W. 88 poles to a rock on a bald knob

1594

368. S. 85. W. 114 pole*s* Crossing a Beech a Gap to a rock on a Bald knob
369. N. 87. W. 16 poles
370. S. 67. W. 42 poles
371. W. 40 poles
372. S. 80. W. 34 poles
373. S. 65. W. 90 poles
374. S. 73. W. 288 poles Crossing a Gap
375. S. 84. W. 158 poles along the bald ground on the Rone mountain to a bunch of Fir trees then leaving the Bald Ground and taking a spur that Divides the waters of Big Rock creek from those of Doe river
376. N. 10. E. 20 poles to a Fir tree.
377. N. 6. W. 8 poles to a Fir tree
378. N. 10 W. 28 poles to a Fir tree
379. N. 13. W. 42 poles to a Fir tree
380. N. 40. W. 26 poles to a Fir tree
381. N. 13. W. 26 poles to a Fir tree
382. N. 30. W. 72 poles to a beech in a low Gap between the waters Last mentioned
383. N. 22. W. 18 poles to a buckeye
384. N. 50. W. 26 poles to a beech
385. N. 10. W. 20 poles to a beech
386. N. 55. W. 8 poles to a beech
387. N. 30. W. 18 poles to a beech on a narrow ridge
388. N. 23. E. 16 poles to a white thorn
389. N. 10. E. 22 poles
390. No. 22. E. 12 poles to a burch
391. N. 4. W. 116 poles along a sharp rocky ridge to a sugar tree
392. N. 5. E. 14 poles to a beech
393. N. 23. W. 14 poles to a cherry

394. N. 48. W. 28 poles to a sugar tree.
395. N. 23. W. 14 poles to a beech
396. N. 8. W. 22 poles to a buckeye
397. N. 28. W. 92. poles to a beech in a low gap of Rock creek and Doe river
398. N. 8. E. 16 poles to a sugar tree
399. N. 5. W. 26 poles to a chesnut
400. N. 74. W. 28 poles to a maple
401. N. 63. W. 32 poles to a maple
402. N. 16. W. 18 poles to an Ashe
403. N. 22 poles to a maple in gap between the waters last mentioned
404. N. 25. W. 84 poles through a Laurel thicket
405. N. 37. W. 22 poles to a maple
406. N. 33. W. 68 poles
407. N. 15. W. 10 poles to a burch
408. S. 75. W. 6 poles to a beech
409. S. 45. W. 12 poles to an oak
410. S. 64. W. 70 poles to a sugar tree

1595

411. N. 85. W. 28 poles to a buckeye in a gap between the waters of *of* rock Creek and those of little Doe river
412. S. 43. W. 20 poles to a beech
413. S. 66. W. 12 poles to a chesnut
414. S. 45. W. 40 poles to a red oak
415. N. 76. W. 36 poles to a red oak
416. S. 65. W. 26 poles to a red oak
417. W. 20 poles to a red oak
418. S. 50. W. 44 poles to a sugar tree
419. N. 73. W. 10 poles to a buckeye
420. N. 31. E. 14 poles to a red oak
421. N. 52. W. 20 poles to a buckeye
422. S. 83. W. 20 poles to a sugar tree
423. S. 77. W. 64 poles to a sugar tree
424. S. 36. W. 60 poles
425. S. 19. W. 28 poles to a buckeye
426. N. 75. W. 84 poles to an Ashe
427. S. 68. W. 20 poles to a red oak
428. N. 63. W. 34 poles to a sugar tree
429. N. 35. W. 30 poles to a maple
430. S. 22. W. 48 poles to a Hornbean in a gap between the waters of Little Doe river and Big Rock Creek
431. N. 45. W. 20 poles to a chesnut
432. N. 18. W. 40 poles to a buckeye
433. S. 56. W. 28 poles to a sugar tree
434. S. 76. W. 14 poles to a Buckeye
435. S. 50. W. 48 poles to a red oak on the top of a high knob
436. N. 66. W. 20 poles to a burch near the Iron mountain road
437. N. 70. W. 36 poles along the road

438. N. 57. W. 10 poles along the road
439. N. 25. W. 16 poles to a hickory near said road
440. N. 42. W. 22 poles to a red oak
441. W. 14 poles to a Chesnut near said road
442. N. 70 W. 18 poles to a hickory near said road
443. N. 30. W. 56 poles to an ashe
444. N. 35. W. 34 poles near said road
445. N. 75. W. 24 poles
446. N. 77. W. 30 poles to a Locust on a high knob
447. S. 83. W. 48 poles
448. N. 66. W. 22 poles to a red oak.
449. N. 53. W. 20 poles to a sugar tree
450. N. 80. W. 46 poles to a chesnut
451. S. 81. W. 30 poles to a Buckeye
452. S. 56. W. 34 poles to a hickory
453. S. 26. W. 20 poles to a red oak
454. S. 53. W. 24 poles to a Chesnut

1596

455. S. 88. W. 30 poles to a low gap on the Iron mountain road
456. N. 70. W. 18 poles to a walnut
457. S. 74. W. 8 poles to a sugar tree on the top of the Iron mountain said tree marked R H where we left the road
458. S. 6. E. 24 poles to a Walnut
459. S. 15. W. 20 poles to a Chesnut
460. S. 33. W. 18 poles to a hickory
461. S. 17. W. 46 poles
462. S. 10. W. 26 poles
463. S. 36. W. 44 poles to a red oak
464. S. 10. W. 18 poles to a red oak
465. S. 60. W. 32 poles to a red oak
466. S. 18. W. 64. poles to a Chesnut
467. S. 74. W. 40 poles to a Chesnut
468. S. 35. W. 24 poles to a Chesnut
469. S. 33. W. 30 poles to a Chesnut
470. S. 65. W. 20 poles to a Chesnut
471. S. 18. W. 16 poles to a hickory
472. S. 40. W. 12 poles to a buckeye
473. S. 45. W. 62 poles to a sugar tree marked R H.
474. S. 57. W. 20 poles to a sugar tree in a low gap between the waters of Rock creek and those of Limestone Cove Creek
475. S. 17. W. 14 poles to a Chesnut
476. S. 79. W. 28 poles
477. S. 11. W. 88 poles to a hickory
478. S. 28. W. 44 poles to a white oak
479. N. 70. W. 26 poles to a Burch
480. N. 75. W. 46 poles to a locust
481. S. 72. W. 34 poles to a Chesnut on the top of a bald knob between Indian Creek of the Limestone Cove creek and those of the Pigeon Roost of Towe river

482. N. 42. W. 100 poles to a Chesnut
483. S. 46. W. 26 poles to a Chesnut
484. S. 64. W. 68 poles to a gap called the Jovial gap between the heads of Pigeon roost and Indian Creek
485. S. 35. W. 98 poles
486. S. 60 poles to an Ashe
487. S. 58 poles to a Chesnut
488. N. 80. W. 34 poles to a Chesnut
489. S. 71. W. 14 poles
490. N. 50. W. 20 poles to a maple
491. N. 72. W. 48 poles
492. S. 77. W. 16 poles
493. N. 80. W. 22 poles
494. S. 37. W. 12 poles to a sugar tree marked R. H. between the Pigeon roost and Indian creek at the foot of the Unaca mountain
495. S. 65. W. 28 poles to a chesnut

597

496. S. 75. W. 34 poles
497. N. 86. W. 6 poles to a maple
498. N. 30. W. 50 poles along the Devils race grounds
499. N. 61. W. 26 poles through a Laurel thicket
500. N. 31. W. 10 poles in said thicket
501. N. 53. W. 72 poles in said thicket
502. N. 71. W. 6 poles in said thicket
503. N. 50. W. 28 poles in said thicket
504. S. 65. W. 36 poles to the top of the Unaca mountain
505. S. 70. W. 106 poles
506. S. 89. W. 16 poles
507. S. 40. W. 10 poles
508. S. 70. W. 10 poles
509. S. 48. W. 20 poles to a spruce pine
510. S. 70. W. 32 poles to a spruce pine
511. S. 52. W. 82 poles over high rocks
512. S. 50. W. 23 poles
513. S. 31. W. 24 poles down the mountain
514. S. 47. W. 280 poles through a gap between the waters of Cove Creek and the Hollow poplar
515. S. 64. W. 40 poles
516. S. 58. W. 52 poles
517. S. 20. W. 12 poles
518. S. 60. W. 52 poles
519. S. 49. W. 20 poles
520. S. 83. W. 80 poles to a Chesnut
521. S. 59. W. 16 poles
522. S. 29. W. 28 poles
523. S. 57. W. 48 poles
524. N. 74. W. 16 poles
525. S. 69. W. 14 poles
526. S. 82. W. 16 poles
527. N. 82. W. 16 poles
528. S. 78. W. 6 poles
529. N. 76. W. 40 poles
530. W. 80 poles
531. S. 67. W. 145. poles
532. S. 37. W. 100 poles through a low gap and through a Laurel thicket
533. S. 34. W. 32 poles to a dogwood
534. S. 77. W. 40 poles
535. S. 43. W. 14 poles to a Chesnut
536. S. 18. W. 20 poles to a Chesnut
537. S. 78. W. 26 poles to a maple
538. S. 62. W. 32 poles to a dogwood
539. N. 77. W. 38 poles
540. S. 36. W. 30 poles

541. S. 80. W. 68 poles to a high knob
542. S. 52. W. 20 poles over a very narrow topped rocky mountain
543. S. 29. W. 26 poles over the same
544. S. 67. W. 36 poles
545. S. 30. W. 46 poles to a Chesnut

1598

546. S. 8. W. 40 poles to a Chesnut at the Shinbone path on the top of the Unaca mountain
547. W. 45 poles
548. S. 50. W. 14 poles
549. S. 68. W. 26 poles to a Chestnut
550. S. 64. W. 8 poles to a chesnut
551. S. 60. W. 40 poles
552. S. 77. W. 32 poles to a Red oak
553. S. 40 W. 22 poles to a chesnut
554. S. 22. W. 34 poles to a white oak
555. S. 65. W. 24 poles to a red oak
556. S. 40. W. 30 poles to a sourwood
557. S. 75. W. 24 poles to a white oak
558. S. 57. W. 34 poles to a hickory
559. S. 27. W. 40 poles to a red oak
560. S. 67. W. 12 poles
561. S. 81. W. 14 poles
562. S. 76. W. 20 poles
563. S. 40. W. 14 poles to a chesnut
564. S. 80. W. 20 poles to a Locust
565. S. 43. W. 38 poles to a hickory
566. S. 20 W. 22 poles to a Chesnut
567. S. 38. W. 20 poles
568. S. 10. W. 36 poles
569. S. 42. W. 36 poles
570. S. 72. W. 14 poles
571. S. 45. W. 40 poles
572. S. 10. W. 28 poles descending
573. S. 23. W. descending the Iron mountain crossing Nollichuchy at 220 poles at the mouth of a Laurelly branch then partly up said branch and partly on the Spur of the mountain 570 poles to the top of a high mountain then crossing the Devils Creek at the distance of 1230 poles One continued Laurel thicket from Nollichucky to this place whole distance four miles 133 poles to the top of the Little Bald mountain
574. S. 49. W. 560 poles to the top of the Big Bald mountain
575. S. 46. W. 280 poles along the Bald mountain road to a red oak
576. S. 7. W. 74 poles along said road
577. S. 46. W. 20 poles to a red oak
578. S. 84. W. 74 poles to a Burch
579. S. 58. W. 16 poles
580. S. 46. W. 54 poles to a white *how*
581. S. 83. W. 14 poles to a Cherry
582. N. 59 W. 24 poles to a maple
583. N. 84. W. 16 poles to a sugar tree

584. S. 73. W. 34 poles to a sugar tree

1599

585. S. 49. W. 80 poles to a maple crossing a low gap between the heads of the South fork of Laurel and Indian creek
586. S. 6. W. 28 poles
587. S. 60. W. 42 poles
588. N. 55. W. 40 poles to a hickory
589. S. 80. W. 66 poles to an oak
590. S. 40. W. 14 poles to a chesnut
591. S. 54. W. 18 poles to a Chesnut
592. S. 43. W. 28 poles to a hickory
593. S. 55. W. 12 poles to a hickory
594. S. 70. W. 60 poles to a Chesnut
595. W. 26 poles to an ashe in a low gap
596. S. 60. W. 20 poles to an oak
597. S. 49. W. 50 poles to a Lynn on a knob
598. S. 24. W. 44 poles to a buckeye
599. S. 79. W. 12 poles
600. S. 27. W. 12 poles to a hickory
601. S. 45. W. 141 poles
602. S. 38. W. 30 poles in a gap
603. S. 15. W. 34 poles
604. S. 31. W. 12 poles
605. S. 50. W. 16 poles
606. S. 24. W. 24 poles to a Chesnut
607. S. 19. W. 64 poles to the top of a knob
608. N. 83. W. 74 poles to a white oak crossing a low gap between Indian Creek and Big Laurel
609. N. 76. W. 56 poles to a Chesnut
610. S. 25. W. 20 poles to a hickory
611. N. 82. W. 28 poles to a hickory
612. N. 57. W. 20 poles to a sugar tree
613. N. 48. W. 52 poles to a hickory
614. N. 67. W. 30 poles to a Chesnut
615. N. 86. W. 34 poles to a hickory
616. N. 68 W. 10 poles to a red oak
617. N. 80. W. 40 poles to a Chesnut on a knob
618. N. 60. W. 20 poles to a buckeye
619. N. 7. W. 60 poles to a hickory
620. N. 29. W. 54 poles to a Chesnut
621. N. 79. W. 24 poles to a chesnut
622. N. 64. W. 20 poles to a Chesnut
623. N. 84. W. 12 poles
624. S. 86. W. 110 poles to a red oak in a low gap
625. N. 85. W. 24 poles to a red oak
626. N. 62. W. 18 poles

1600

627. N. 80. W. 36 poles
628. S. 55. W. 20 poles
629. S. 70. W. 14 poles
630. S. 60. W. 18 poles
631. S. 78. W. 40 poles to a chesnut
632. W. 14 poles to a hickory
633. S. 51. W. 20 poles to a walnut
634. N. 60. W. 28 poles to a walnut
635. N. 80. W. 32 poles to a chesnut oak in a gap between the waters of Laurel and Indian Creek

636. N. 55. W. 18 poles to a hickory
637. S. 65. W. 20 poles to a white oak
638. S. 72. W. 28 poles to a chesnut oak at the head branches of Laurel & Indian Creek
639. N. 60. W. 52 poles to a sugar tree
640. N. 32 poles to a chesnut on a high knob
641. N. 17. W. 52 poles
642. N. 21. W. 16 poles to a Chesnut
643. N. 13. E. 148 poles through the Elk field Gap to a spanish oak on a knob betwix Indian creek and Laurel
644. N. 26. E. 12 poles to a walnut
645. N. 10 E. 40 poles to a Chesnut
646. N. 5. E. 66 poles to a walnut
647. N. 32. E. 60 poles to a buckeye
648. N. 31. W. 52 poles to a low gap betwix thewaters of Indian creel and Laurel
649. N. 3. W. 22 poles to a burch
650. N. 23. W. 62 poles to a spanish oak
651. N. 78. W. 26 poles to a deep gap between the waters aforesaid
652. S. 80. W. 20 poles to a buckeye
653. N. 65. W. 60 poles rising the steep part of the sugar loaf mountain to a white oak
654. S. 80 W. 30 poles to a chesnut on the top of the sugar loaf
655. N. 13. W. 235 poles
656. N. 5. W. 40 poles to a Chestnut in Boone's Cove
657. N. 64. E. 28 poles to a white oak
658. N. 20. E. 24 poles to a black oak
659. N. 42. E. 80 poles to a sugar tree
660. N. 29. E. 34 poles to a spanish oak
661. N. 81. W. 40 poles Crossing a low gap at the foot of the Flint mountain between the North fork of Laurel and Indian creek to a maple
662. N. 6. E. 20 poles to a *suor*wood

1601

663 N. 33. E. 20 poles to a hickory
664. N. 13. W. 28 poles to a spanish oak
665. N. 13. E. 34 poles
666. N. 33. E. 100 poles to a Chesnut
667. N. 26. E. 380 poles to top of the Flint mountain
668. N. 30. W. 88 poles down a rocky narrow mountain
669. N. 78. W. 72 poles on a narrow rocky mountain
670. N. 66. W. 14 poles — said mountain
671. N. 85. W. 20 poles
672. S. 77. W. 82 poles
673. N. 7. W. 40 poles
674. N. 48. W. 20 poles to a sugar tree and Locust at Loves Corner in a narrow gap
675. N. 60. W. 106 poles up a steep ridge
676. N. 37. W. 62 poles to a sugar tree
677. N. 72. W. 26 poles to a sugar tree

678. S. 80. W. 22 poles to a red oak
679. N. 40. W. 46 poles to the top of a knob
680. S. 70. W. 28 Poles on a high mountain
681. N. 71. W. 28 poles
682. S. 80. W. 20 poles to a Buckeye
683. N. 16 poles to a beech
684. N. 15. W. 28 poles
685. N. 13. E. 74 poles
686. N. 60. W. 12 poles to a spanish oak
687. N. 16. W. 34 poles
688. N. 65. W. 60 poles to a beech
689. W. 22 poles to a maple
690. N. 75. W. 10 poles
691. N. 18. W. 30 poles to a sugar tree
692. N. 35. W. 30 poles to a beech
693. N. 7. W. 60 poles to a beech
694. N. 49. W. 20 poles to a beech
695. N. 55. W. 68 poles to a spanish oak
696. N. 16. W. 32 poles to an ashe on the top of the Big butt near a clift of rocks
697. S. 75. W. 28 poles to a beech
698. W. 50 poles to a cherry
699. S. 43. W. 24 poles to a spanish oak
700. S. 57. W. 72 poles Crossing the Split rock along a rocky mountain to a beech
701. S. 70. W. 40 poles to a buckeye.
702. S. 56. W. 60 poles to a beech
703. S. 26. W. 38 poles to a buckeye.
704. S. 61. W. 32 poles to a maple
705. S. 55. W. 28 poles to a Chesnut
706. S. 66. W. 40 poles to a spanish oak
707. S. 71. W. 36 poles

1602

708. W. 36. poles to a Chesnut
709. N. 85. W. 26 poles to a spanish oak
710. N. 71. W. 46 poles
711. S. 46 poles to a Chesnut
712. S. 45. W. 30 poles
713. S. 62. W. 68 poles to a spanish oak on the top of a knob
714. S. 45. W. 32 poles to a sugar tree
715. S. 18. W. 42 poles
716. N. 80. W. 22 poles
717. S. 35. W. 34 poles to a sugar tree
718. S. 50. W. 16 poles to a chesnut
719. S. 12. W. 32 poles to a spanish oak
720. S. 82. W. 10 poles to a buckeye
721. S. 45. W. 14 poles
722. S. 77. W. 52 poles to a Cucumber
723. S. 84. W. 20 poles to a chesnut
724. S. 57. W. 44 poles to a chesnut
725. S. 46. W. 46 poles to a maple
726. S. 82. W. 28 poles to a Burch
727. S. 54. W. 28 poles to a Clift of rocks
728. S. 21½. W. 205 poles through a Laurel thicket almost inaccessable
729. S. 80. W. 14 poles on a Laurelly mountain
730. S. 58. W. 36 poles through Laurel
731. S. 41. W. 20 poles through laurel

732. S. 80′ W. 16 poles through laurel
733. S. 58. W. 20 poles
734. S. 62. W. 600 poles through some beechy ground and a Laurel thicket
735. S 7. E. 120 poles through a Laurel thicket to a Chesnut on a very high knob
736. S. 28. W. 16 poles to a spanish oak
737. N. 83. W. 26 poles
738. N. 46. W. 80 poles
739. S. 45. W. 30 poles to a Chesnut
740. S. 53. W. 36 poles to an oak
741. N. 71. W. 30 poles to a sugar tree
742. S. 67. W. 54 poles to a Sourwood
743. S. 78. W. 28 poles to an oak
744. S. 36. W. 20 poles to a chesnut
745. S. 25. W. 30 poles to a Chesnut
746. S. 76. W. 20 poles
747. S. 82. W. 16 poles
748. N. 80. W. 20 poles
749. S. 57. W. 20 poles to a sourwood
750. S′ 28 poles to a maple
751. S. 8. W. 36 poles
752. S. 35. W. 10 poles to a chesnut
753. W. 36 poles
754. S. 47. W. 18 poles
755. S. 5. W. 10 poles
756. S. 40. W. 32 poles to a maple
757. S. 68. W. 28 poles to a sourwood among some rough rocks

1603

758. N. 80. W. 38 poles to a sourwood
759. S. 54. W. 40 poles to a Chesnut oak
760. S. 20. E. 42 poles to a maple
761. S. 17. W. 14 poles to a chesnut oak
762. S. 83. W. 30 pol-s
763. S. 50. W. 52 poles
764. S. 77. W. 52 poles
765. N. 60. W. 30 poles to a chesnut
766. N. 85. W. 26 poles to a white oak
767. S. 52. W. 50 poles to a chesnut
768. S. 57. W. 34 poles to a chesnut oak
769. S. 71. W. 32 poles
770. S. 63. W. 40 poles to a white pine
771. S. 49. W. 14 poles to a sourwood
772. S. 75. W. 20 poles to a dogwood
773. S. 61. W. 26 poles to a gap
774. S. 31. W. 40 poles crossing a low gap between the waters of Laurel, Brushy and Cove Creek
775. W. 16 poles to a spanish oak
776. S. 12. W. 14 poles
777. S. 38. W. 24 poles to a Gum
778. S. 20′ E. 20 poles to the road leading from Burnets Station to Bruskey Cove
779. S. 27. W. 44 poles to a gap in said road between the waters of Laurel and those of Paint Creek
780. S. 5. E. 30 poles to a poplar near *near* said road then leaving the road
781. S. 86. W. 20 poles
782. S. 20. W. 24 poles to a white oak.
783. S. 76. W. 14 poles to a dogwood

784. S. 10. W. 20 poles to a chesnut
785. S. 85. W. 28 poles to a Chesnut oak
786. S. 49. W. 26 poles to a chesnut
787. S. 19. E. 30 poles
788. S. 30. W. 14 poles to a white pine in a deep gap between the waters of Laurel and Paint Creek
789. S. 9. E. 24 poles to a white oak
790. S. 16. W. 32 poles
791. S. 12. E. 88 poles to the top of a knob
792. S. 44. W. 18 poles to a black oak
793. S. 42 poles over rocks
794. S. 40. E. 80 poles on a high knob
795. S. 67. E. 174 poles
796. S. 29. W. 156 poles through a low gap between the waters of Laurel and Paint Creek
797. S. 51. W. 115 poles
798. S. 5. W. 234 poles Crossing a gap and high knob

1604

799. S. 58. W. 20 poles
800. N. 78. W. 18 poles
801. S. 45. W. 20 poles
802. S. 10. E. 34 poles to a Chesnut
803. S. 45. W. 44 poles to a hickory
804. S. 38. W. 16 poles to a hickory
805. S. 10. E. 20 poles to a chesnut in a gap between the waters of Paint Creek and those of the French Broad river
806. S. 71. W. 38 poles to a dogwood
807. S. 54. W. 16 poles to a locust
808. S. 41. W. 14 poles to a Chesnut
809 S. 60. W. 14 poles to a dogwood
810. S. 47. W. 32 poles to a hickory
811. S. 17. W. 26 poles to a dogwood
812. S. 28. W. 30 poles to a chesnut
813. S. 30. W. 20 poles to a chesnut
814. S. 42. W. 34 poles to a Locust
815. S. 6. E. 26 poles to a white oak
816. S. 66. W. 36 poles
817. S. 23. E. 180 poles to a chesnut on a knob
818. S. 58. W. 16 poles to a Chesnut
819. S. 30. W. 40 poles to a Chesnut
820. S. 75. W. 18 poles to a chesnut
821. N. 73. W. 14 poles to a Chesnut
822. S. 70. W. 26 poles to a Chesnut
823. N. 82. W. 30 poles to a hickory in sight of French Broad river
824. S. 78. W. 28 poles
825. S. 15. W. 26 poles to a sourwood
826. S. 35. W. 18 poles to a spanish oak
827. N. 57. W. 26 poles to a sourwood
828. S. 80. W. 14 poles to a dogwood
829. S. 7. W. 24 poles to a chesnut
830. S. 56. W. 22 poles to a dogwood
831. W. 14 poles to a gum
832. S. 55. W. 50 poles to a maple
833. S. 20 poles
834. S. 77. W. 20 poles to an oak

835. S. 60. W. 12 poles to a white oak
836. N. 47. W. 42 poles to a pine
837. N. 7. W. 14 poles
838. N. 46. W. 86 poles to a dogwood on a high knob
839. N. 25. E. 28 poles to a hickory
840. N. 42. W. 16 poles to an oak
841. N. 34. W. 16 poles to a gum
842. N. 55. W. 22 poles to a gum
843. N. 10. W. 28 poles to a gum
844. W. 20 poles to a sourwood
845. S. 47. W. 20 poles to a maple
846. N. 84. W. 26 poles to a Gum
847. N. 63. W. 14 poles to a chesnut on a high knob
848. N. 38. E. 12 poles

1605

849. N. 18 poles to a dogwood
850. N. 20. W. 16 poles to a sourwood
851. N. 5. E. 20 poles to a gum
852. N. 10. W. 46 poles to a pine observe an Island in, *in* French Broad bearing S. 60. W.)
853. S. 78. W. 18 poles to a pine
854. N. 55. W. 60 poles to a dogwood
855. N. 5. W. 20 poles
856. N. 31. W. 12 poles
857. N. 46. W. 22 poles
858. W. 16 poles to a gum
859. S. 70. W. 10 poles to a maple
860. S. 86. W. 36 poles
861. N. 23. W. 100 poles to the top of a high knob
862. N. 61. W. 74 poles to a pine
863. N. 24. W. 16 poles to a pine
864. N. 55. W. 18 poles to a maple
865. N. 50. W. 34 poles
866. S. 7. W. 14 poles
867. S. 80. W. 16 poles
868. S. 25. W. 20 poles
869. S. 68. W. 22 poles to a sourwood
870. S. 64. W. 20 poles to a dogwood
871. S. 79. W. 48 poles
872. S. 50 W. 20 poles
873. S. 69. W. 14 poles to an oak
874. N. 55. W. 14 poles
875. N. 65. W. 20 poles to a gum
876. N. 52. W. 16 poles
877. N. 75. W. 60 poles to a chesnut
878. N. 47. W. 20 poles to a hickory
879. S. 85. W. 28 poles to a pine
880. N. 40. W. 22 poles to a pine
881. N. 63. W. 42 poles to a dogwood in a deep valley
882. N. 67. W. 60 poles to a hickory
883. S. 35. W. 20 poles
884. S. 56. W. 46 poles to an oak
885. S. 37. W. 30 poles to an hickory
886. S. 81. W. 54 poles to a hickory
887. N. 85. W. 14 poles to a white oak
888. S. 65. W. 20 poles to a hickory
889. S. 38. W. 14 poles to a hickory
890. S. 63. W. 32 poles to a blackjack
891. S. 77. W. 60 poles to a pine
892. S. 29. W. 42 poles

893. S. 52. W. 22 poles to a black oak
894. S. 55. W. 20 poles to a black oak
895. S. 46. W. 14 poles to a white oak on a spur of the mountain
896. S. 85. W. 92 poles to a pine marked I. S. on the top of the painted rock on French Broad river

1606

897. S. 5. W. 106 poles from the top of the Painted rock crossing French Broad river about eight poles above the mouth of Paint Creek the river is about twenty poles wide to a black oak on the top of a knob
898. S. 42. W. 24 poles to a hickory
899. S. 13. W. 42 poles
900. S. 8. poles observed the Elk mountain to bear S. 24. W.
901. S. 36. E. 21 poles
902. S. 6. E. 20 poles to a pine
903. S. 57. E. 20 poles to a pine
904. S. 10. W. 14 poles to a
905. S. 6. E. 12 poles
906. S. 50. E. 22 poles
907. S. 13. W. 14 poles to a white oak
908. S. 30. E. 34 poles
909. S. 50. E. 20 poles
910. S. 18. W. 14 poles to a white oak
911. S. 43. W. 26 poles to a spanish oak
912. S. 12. W. 24 poles
913. S. 32. W. 30 poles
914. S. 40 W. 16 poles
915. S. 70. W. 42 poles to a white oak
black oak
916. S. 80. W. 60 poles
917. S. 74. W. 36 poles to a white oak
918. N. 82. W. 30 poles
919. S. 70. W. 130 poles
920. S. 60. W. 32 poles to a white oak
921. S. 6. E. 24 poles to a chestnut
922. S. 37. E. 26 poles to a
923. N. 71. E. 56 poles to a pine
924. S. 58 poles to a white oak
925. S. 30. E. 28 poles to a white oak
926. S. 69. E. 30 poles to a white oak
927. S. 60. W. 8 poles
928. S. 30. W. 36 poles to the road that leads from Buncombo Courthouse in North Carolina past the warm Springs on French Broad to Knoxville in Tennessee between the waters of Wolf creek and Grossey Creek
929. S. 20 poles
930. S. 47. E. 16 poles
931. S. 44. W. 52 poles
932. S. 45. E. 44 poles to a spanish oak
933. S. 72. E. 18 poles
934. S. 50. E. 10 poles
935. E. 10 poles
936. S. 33. E. 20 poles to an oak
white oak
937. S. 12. E. 18 poles to an oak
938. E. 20 poles
939. N. 75. E. 18 poles to a blackjack
940. S. 11. E. 16 poles

1607

941. S. 10. W. 30 poles to a gum in a gap
942. S. 27. E. 22 poles to a gum
943. S. 25. E. 34 poles to an oak
944. S. 15. W. 46 poles to a white oak

945. S. 33. E. 18 poles to a Black oak
946. S. 60. E. 44 poles to a poplar
947. S. 16. E. 70 poles to a poplar
948. S. 10. W. 18 poles to a chesnut
949. S. 10. E. 24 poles
950. S. 43. E. 30 poles to a chesnut
951. S. 12. E. 16 poles to an oak
952. S. 50. E. 20 poles
953. S. 22. E. 34 poles to the top of a knob
954. S. 53. E. 22 poles to a chesnut
955. S. 25. W. 40 poles to a chesnut
956. S. 5. W. 24 poles to an oak
957. S. 10. W. 24. poles to a pine
958. S. 45. W. 54 poles to a chesnut on a knob
959. S. 35. W. 40 poles to a chesnut
960. S. 7. W. 40 poles to a chesnut
961. S. 60. W. 26 poles
962. S. 37. E. 22 poles
963. S. 55. E. 42 poles to the top of a knob betwixt the waters of Shutin Creek and wolf creek
964. N. 73. E. 98 poles to a chesnut
965. S. 83. E. 14 poles to a maple
966. S. 30. E. 24 poles
967. S. 16. W. 30 poles
968. S. 50. W. 22 poles
969. S. 8. E. 6 poles
970. S. 43. W. 36 poles
971. S. 32 poles to a pine
972. S. 10. W. 12 poles
973. S. 43. W. 44 poles
974. S. 46. W. 16 poles to a chesnut
975. S. 38. W. 16 poles to a chesnut
976. S. 60. W. 30 poles
977. S. 25. W. 32 poles to a chesnut between spring creek and wolf Creek
978. N. 86. W. 22 poles to a maple
979. S. 57. W. 64 poles
980. S. 65. W. 20 poles to an oak
981. S. 80. W. 40 poles to a white oak
982. W. 20 poles to a chesnut oak
983. N. 80. W. 24 poles to a chesnut
984. S. 63. W. 16 poles
985. S. 85. W. 22 poles to a hickory
986. S. 65. W. 12 poles
987. S. 22. W. 6 poles
988. S. 3. W. 66 poles to a dogwood in a gap between the branches of Spring creek and Wolf creek
989. S. 20. E. 20 poles
990. S. 10. E. 44 poles

1608

991. S. 5. E. 20 poles
992. S. 67. E. 22 poles
993. S. 29. E. 20 poles
994. S. 43. E. 16 poles
995. S. 14. E. 10 poles to two rocks
996. S. 35. W. 32 poles
997. S. 25. W. 16 poles
998. S. 44 poles
999. S. 30. E. 18 poles
1000. S. 3. E. 16 poles
1001. S. 18. E. 18 poles
1002. S. 33. W. 28 poles
1003. S. 24. E. 46 poles to a rock
1004. S. 30. E. 22 poles
1005. S. 14. E. 42 poles
1006. S. 25. E. 60 poles to rocks
1007. S. 60. E. 22 poles to the top of the Big Bluff
1008. S. 10. W. 14 poles
1009. S. 49. W. 18 poles
1010. S. 27. E. 44 poles
1011. S. 51. W. 54 poles

1012. S. 11. W. 18 poles very rich
1013. S. 53. W. 20 poles
1014. S. 69. W. 44 poles
1015. N. 76. W. 18 poles
1016. S. 71. W. 44 poles
1017. S. 55. W. 36 poles to a low gap at *at* the foot of the big bluff between the waters of Spring creek and Wolf creek
1018. N. 72. W. 14 poles
1019. S. 80. W. 36 poles
1020. S. 52. W. 16 poles
1021. S. 82. W. 30 poles
1022. S. 50. W. 32 poles to the top of a high knob at the heads waters of Spring, Wolf and Big Creeks
1023. S. 25. E. 60 poles
1024. S. 11. W. 16 poles
1025. S. 20. W. 30 poles to rocks
1026. S. 18 poles to a hickory
1027. S. 5. E. 34 poles to a spanish oak
1028. S. 15. W. 40 poles
1029. S. 26. W. 36 poles
1030. S. 52. W. 14 poles
1031. S. 70. W. 18 poles
1032. N. 80. W. 20 poles
1033. N. 57. W. 10 poles
1034. S. 87. W. 16 poles
1035. S. 80. W. 54 poles to a chesnut
1036. S. 66. W. 18 poles to a walnut
1037. S. 47. W. 40 poles to a locust
1038. S. 26. W. 26 poles
1039. S. 17. W. 20 poles
1040. S. 40 W. 20 poles to a walnut
1041. S. 5. W. 32 poles to a chesnut
1042. S. 30. W. 14 poles

1609

1043. S. 28. E. 20 poles
1044. S. 13. W. 30 poles to a rock
1045. S. 52. W. 14 poles
1046. S. 80 W. 58 poles
1047. S. 40. W. 60 poles
1048. S. 6. W. 48 poles to a*n* ash
1049. S. 40. W. 16 poles
1050. S. 15. W. 30 poles
1051. S. 23. W. 16 poles
1052. S. 24 poles to a spanish oak
1053. S. 37. W. 34 poles
1054. S. 21. W. 30 poles to a maple.
1055. S. 30. W. 22 poles to a chesnut
1056. S. 20. W. 50 poles to a spanish oak
1057. S. 60 W. 16 poles to a chesnut
1058. S. 50 W. 22 poles
1059. S. 12. W. 46 poles to a low gap at the head waters of Spring Creek, Big creek and branches of Pigeon
1060. S. 37. E. 46 poles to a chesnut
1061. S. 68. E. 56 poles to a hickory
1062. S. 65. W. 48 poles to a chesnut
1063. S. 5. W. 18 poles
1064. S. 14 poles
1065. S. 27. E. 48 poles to a Service
1066. S. 6. W. 32 poles to a Chesnut
1067. S. 47. W. 40 poles to the place where the path leading from Pigeon Old fields to Big creek and French Broad river comes in a gap of the ridge that Divides the waters of Pigeon river from Spring Creek
1068. N. 50. W. 20 poles to a sugar tree
1069. N. 82. W. 14 poles to a chesnut
1070. S. 69. W. 26 poles to a sugar tree

1071. S. 75. W. 66 poles
1072. N. 84. W. 18 poles
1073. S. 55. W. 38 poles
1074. S. 42. W. 20 poles to a burch
1075. S. 76. W. 18 poles
1076. S. 46. W. 28 poles to a chesnut
1077. S. 40. W. 40 poles to a chesnut
1078. S. 62. W. 12 poles
1079. S. 37. W. 54 poles to a buckeye in a gap betwixt Big creek and the waters of Pigeon river
1080. S. 60. W. 32 poles to a buckeye
1081. S. 45. W. 40 poles to a hickory
1082. S. 13. W. 20 poles
1083. S. 44. W. 40 poles to a hickory
1084. S. 27. W. 12 poles
1085. S. 50. W. 46 poles to a chesnut
1086. S. 73. W. 20 poles to a hickory

1610

1087. S. 30. W. 18 poles
1088. S. 78. W. 40 poles to a buckeye
1089. S. 38. W. 12 poles to an oak
1090. S. 55. W. 30 poles
1091. S. 30. W. 20 poles to a poplar
1092. S. 15. W. 20 poles to a hickory
1093. N. 80. W. 32 poles
1094. N. 75. W. 40 poles
1095. W. 34 poles to a Service
1096. N. 52. W. 48 poles
1097. S. 70. W. 20 poles to a chesnut
1098. N. 28. W. 40 poles
1099. N. 87. W. 26 poles to a chesnut
1100. N. 50. W. 138 poles to a service
1101. S. 77. W. 18 poles to a chesnut
1102. N. 63. W. 12 poles to a maple
1103. S. 80. W. 46 poles to a chesnut
1104. N. 42. W. 36 poles to an oak
1105. N. 57. W. 28 poles to a chesnut
1106. N. 77. W. 48 poles
1107. S. 56. W. 26 poles to a gum
1108. S. 46. W. 16 poles to a poplar
1109. S. 70. W. 34 poles
1110. S. 44. W. 70 poles
1111. N. 60. W. 18 poles
1112. N. 54. W. 36 poles to a low gap at the head of Big Creek and the waters of Pigeon river
1113. N. 81. W. 20 poles to a sourwood
1114. N. 60. W. 36 poles to a poplar
1115. W. 60 poles to a maple
1116. N. 85. W. 12 poles
1117. N. 45. W. 20 poles to a service
1118. N. 60. W. 30 poles to a chesnut
1119. W. 48 poles to a chesnut
1120. S. 61. W. 24 poles to a chesnut
1121. S. 70. W. 24 poles to a chesnut
1122. S. 65. W. 74 poles to a chesnut
1123. S. 87. W. 24 poles to a chesnut
1124. N. 70. W. 30 poles to a chesnut
1125. N. 40. W. 24 poles to a chesnut
1126. N. 57. W. 18 poles to a sourwood
1127. N. 45. W. 20 poles to a chesnut
1128. N. 69. W. 20 poles

1129. N. 60. W. 48 poles to a chesnut
1130. S. 60. W. 40 poles to a white oak
1131. S. 72. W. 46 poles to a hickory
1132. S. 60. W. 24 poles
1133. S. 73. W. 18 poles to a spanish oak
1134. S. 53. W. 26 poles to a chesnut

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1135. W. 20 poles to a sugar tree
1136. S. 66. W. 16 poles
1137. N. 70. W. 34 poles to a chesnut
1138. S. 78. W. 24 poles to a Locust
1139. S. 66. W. 40 poles
1140. S. 70 W. 20 poles
1141. N. 70. W. 26 poles to a chesnut
1142. N. 46. W. 32 poles to a chesnut
1143. N. 60. W. 18 poles
1144. S. 68. W. 46 poles to a white oak
1145. N. 80. W. 32 poles
1146. S. 35. W. 32 poles to a chesnut
1147. S. 30. W. 24 poles to a chesnut
1148. S. 81. W. 32 poles to a chesnut
1149. S. 50. W. 48 poles to a chesnut
1150. S. 12. W. 26 poles
1151. S. 47. W. 40 poles to a hickory
1152. S. 30. W. 60 poles
1153. S. 41. W. 40 poles
1154. S. 37. W. 20 poles to a hickory
1155. S. 64. W. 20 poles to a dogwood
1156. S. 46. W. 20 poles
1157. S. 17. W. 24 poles
1158. S. 26. W. 14 poles
1159. S. 60. W. 96 poles to the bank of Pigeon river below the mouth of Henry's creek which heads in the Smoky mountain and Discharges self on the west side of said river
1160. S. 48. E. 30 poles crossing Pigeon river to a cucumber tree near below the mouth of Henry's creek
1161. S. 65. W. 20 poles rising the spur of the Smoky mountain
1162. N. 81. W. 40 poles
1163. S. 58. W. 28 poles to a sourwood
1164. S. 86. W. 16 poles
1165. S. 35. W. 26 poles to a chesnut oak
1166. S. 67. W. 26 poles
1167. S. 58. W. 20 poles
1168. S. 62. W. 8 poles
1169. N. 80. W. 20 poles to a knob
1170. S. 43. W. 24 poles
1171. S. 54. W. 26 poles
1172. N. 70. W. 20 poles
1173. S. 66. W. 28 poles to a gum
1174. S. 74. W. 76 poles to a poplar
1175. S. 12. W. 24 poles to an oak
1176. S. 33. W. 18 poles
1177. S. 15. W. 36 poles
1178. N. 70. W. 28 poles
1179. N. 80. W. 50 poles
1180. N. 70. W. 40 poles
1181. W. 14 poles to a chesnut oak
1182. S. 68. W. 20 poles
1183. S. 60. W. 20 poles to a chesnut
1184. S. 83. W. 32 poles to a chesnut
1185. S. 67. W. 30 poles

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1186. S. 60. W. 66 poles
1187. N. 70. W. 16 poles to a chesnut
1188. S. 69. W. 14 poles to a chesnut
1189. N. 79. W. 18 poles to a Gum
1190. N. 69. W. 8 poles
1191. S. 176. W. 184 poles to the top of a Laurrel*ly* knob
1192. S. 82. W. 260 poles through a laurel thicket to the top of a high Pinnacle of the Smoky mountain at some rocks that appear to have been split with Lightening from which place may be seen both French Broad and Pigeon rivers

1613 We do here by certify that the foregoing notes are a true copy from the original. Also the draft here unto annexed is an Accurate Plat of the line. The numbers affixed to the plat are designed for the purpose of an easy reference to the Notes for the intermediate numbers and particulars on any part of the line.

Given Under Our hands this 15th day of October 1799.

ROBERT HENRY,
JOHN STROTHER,
Surveyors.

1614 STATE OF NORTH CAROLINA:

We certify that Messrs. Robert Henry and John Strother were appointed Surveyors by us to run the boundary line between the States of North Carolina and Tennessee and that said line was accurately run and Sufficiently marked under our Inspection from the Virginia line to the painted rock On French Broad river the Distance is One hundred and twenty three miles and nint*h* seven poles and from thence twenty eight miles and twenty poles to the pinnacle of the Smokey mountain where we stop-ed not knowing where the Indian Treaty line will run as it is not ascertained at the place where the boundary line will intersect it and that the line is accurately platted and the courses and Distances carefully transcribed from the original field notes.

D. VANCE,
JO McDOWELL.
M. MATTHEWS,
Commissioners.

1615 If the boundary line between the States of North Carolina and Tennessee is continued on from Note 157—at a cherry tree at Rones Creek path on the top of the Stone Mountain to where Hoskin's fork of Rones creek breaks through the same then along the top of the said Mountain to Griffins path at a maple as mentioned in the Notes annexed to the plan of the said line as run under the directions of the Commissioners appointed for the purpose (Note No. 275.) the straight course would be South forty West for*ty* miles One hundred and twenty poles, the Intermediate courses and distances of the windings of the said Mountain to the said fork of Rones

Creek as above crossing the same ascending the Stone Mountain and Continuing on the same to Griffins path as above would be as follows to wit: from Note 157 at Rones creek path S. 32 W. poles, S. 23. W. 14 poles, S. 3. E. 36 poles, S. 40. W. 100 poles to Hoskins fork of Rones creek, then crossing on the same course and ascending the Stone mountain and with the same 400 poles, S. 80. W. 200 poles — S. 25. W. 95 poles, S. 2. E. 80 poles, S. 27. W. 20 poles, S. 5. E. 40 poles, S. 32. W. 28. poles, S. 28. W. 36 poles S. 25. W. 20 poles, S. 40 W. 40 poles.—S. 16. W. 46 poles S. 29. W. 60 poles.—S. 36. W. 66 poles to the place where the Commissioners came again to the top of the Stone Mountain at course No. 271. in their Notes and with the said Notes S. 75. W. 32 poles.—S. 45. W. 40 poles.— S. 75. W. 52 poles. S. 42. W. 76 poles to a maple near Griffins path as aforesaid at No. 275.

JOHN STROTHER.

1616 STATE OF NORTH CAROLINA:

SECRETARY'S OFFICE, 10TH JULY, 1803.

This certifies that the foregoing contained in 27 pages, is a true copy of the courses and distances of the boundary line between this State, and the State of Tennessee; together with the Report of the Commissioners and Certificate and Notes of the Surveyors,—and that the draft annexed to these sheets, is also a copy of the said boundary line; all of which are taken from the originals deposited in this office.

Given under my hand at Raleigh the date aforesaid.

WILL WHITE, *Sec'y.*

End of Exhibit No. 2 to deposition of Rob't T. Quarles.

1617 STATE OF TENNESSEE,
Department of State:

To all to whom these presents shall come: Greeting:

I Hallum W. Goodloe Secretary of State of the State of Tennessee do hereby certify that the annexed is a true copy of the report of the Commissioners to Governor McMinn who ran the line between Tennessee and North Carolina in 1821. The original of which is now on file and a matter of record in the Department of Archives, at the State Capitol, Nashville, Tenn.

In Testimony Whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this 25th day of August A. D. 1911.

[Seal of the State of Tennessee.]

HALLUM W. GOODLOE.
Secretary of State.

1618 Ex. No. 3 to Deposition — Rob't T. Quarles.

To His Excellency Joseph McMinn, Governor of the State of Tennessee:

The Undersign*de* Alexander Smith, Isaac Allen and Simeon Perry Commissioners on the part of the State of Tennessee: and James Mebane, Montfort Stokes and Robert Love Commissioners on the part of the State of North Carolina, duly appointed under the authority of the Acts of the Legislatures of the said States respectively; Having met at the Town of New Port in the State of Tennessee on the 16th. day of July A. D. 1821, to settle, run and mark the dividing line between the two States, from the termination of the line run by McDowell, Vance and Matthews in the year of our Lord 1799, to the Southern Boundary of the said States, Respectfully Report, That we proceeded to ascertain, run and mark the said dividing line as designated in the XIth. Article called the Declaration of Rights, of the Constitution of the State of Tennessee, and in the Act of the General Assembly of the State of North Carolina, entitled "An Act for the purpose of ceding to the United States of America, Certain Western lands therein described, passed in 1789:— Which said dividing line as run by us, Begins at a Stone set up on the North side of the Catalanchee Turnpike road, and marked on the Westside Ten. 1821; and on the East side N. C. 1821, running thence a southwestwardly course to the Bald Rock on the summit of the great Iron or Smok*e*y Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven Miles above the old Indian Town of Tellassee; crossing Porter's gap at the distance of twenty two miles from the beginning; passing Meig's boundary line at thirty one and a half miles;—the Equonettly path at fifty three miles;—and crossing Tennessee River at the distance of sixty five miles from the beginning. From Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the West fork of Tellico River, and at the distance of Nin-ty three miles from the beginning. Thence along the extreme height of the Unicoy or Unaka Mountain to the South west end thereof at the Unicoy or Unaka Turnpike road, where a corner Stone is set up, marked

Ten. on the West side and N. C. on the East side; and
1619 where a Hickory tree is also marked on the South side
Tenn. 101 *m.* and on the North side N. C. 101 *m.* being One hundred and One Miles from our beginning. From thence a due course South two miles and two hundred & fifty two poles to a Spruce Pine on the North Bank of Highwassee River, below the mouth of Cane Creek; thence up the said River the same course about one mile, and crossing the same to a Maple marked WD and RA on the South bank of the River: Thence continuing the same course due South Eleven Miles and two hundred and twenty

three poles to the Southern Boundary of the States of Tennessee and North Carolina; making in all One Hundred and Sixty Miles and two hundred and twenty three poles from our beginning; and striking the Southern Boundary line twenty three poles West of a tree in said line, marked 72. in.—Where we set up a Square post marked on the West side Ten. 1821: and on the South side G. The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore and aft tree, and three Chops on each side line tree; and mile marked at the end of each mile; agreeably to the plots which accompanies this Report, and which said plats and Report are Certified by us in Duplicate, one for each of the said States, in the same words, marks and figures; which we respectfully submit to the Governors of the said States of Tennessee and North Carolina.

Given under our hands at Knoxville in the State of Tennessee on the 31st day of August A. D. 1821.

A. SMITH,
ISAAC ALLEN,
SIMEON PERRY,
Commissioners of Tennessee.
JAMES MEBANE,
M. STOKES,
R. LOVE,
Commissioners of North Carolina.

End of Exhibit No. 3 to deposition of Robt. T. Quarles.

1620 January 3rd, 1911, at 2 P. M., the taking of proof was resumed according to adjournment.

Present (For North Carolina): C. B. Matthews, Esq.; Ben Posey, Esq.; Mr. W. R. Hopkins.
(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

And whereupon counsel for Tennessee notified complainant and her counsel that Tennessee would, under the stipulation and order of the Supreme Court thereon in this cause, here offer as evidence on behalf of Tennessee the depositions of W. D. Hale, as found in the record in the cause, entitled Charles Hebard v. D. W. Belding and others, in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, No. 1056, upon the Rule Docket of that Court, and also the deposition of the said Hale taken in the same case under the issues made up under the bill of review filed therein by William R. Hopkins and others, and which said depositions are also copied into the record of said cases taken by appeal from the decrees of the Circuit Court of the United States at Knoxville to the United States Circuit Court of Appeals at Cincinnati.

It is agreed that printed copies of the depositions of said W. D. Hale as given in the original case styled Hebard v. Belding and

others and in the bill of review case, styled Hopkins and others v. Hebard may be used as true and authentic copies of said depositions and as complying with the stipulation in this cause, and this agreement shall also apply to and cover the testimony and depositions of other witnesses, viz: J. K. Wilson, James Farr, Emerson Debity, B. R. Nichols, A. D. Cline, John Debity, T. E. H. McCroskey, H. M.
Ditmore, Boyd McMurray, all of whom were examined in
1621 said original and bill of review cases desired to be offered in this cause by the defendant, State of Tennessee, which said depositions are as follows: This January 3rd, 1911, certified to

S. E. CLEAGE,
Clerk of the Supreme Court of Tennessee.

1622 In the U. S. Circuit Court at Knoxville.

W. R. HOPKINS et al.
vs.
CHAS. HEBARD
&
D. W. BELDING et al.
vs.
CHAS. HEBARD et al.

Deposition of W. D. Hale, Witness for Respondents Taken On 8 Day of May, 1908.

Examined by Mr. McCROSKEY:

D. W. Hale.

It is agreed that the evidence shall be taken in shorthand transcribed by the stenographer, who shall sign the names of the witness thereto, and file the same with the Clerk of said Court; said depositions are taken on behalf of the respondents, Smoky Mountain Land, Lumber and Improvement Company.

Said witness, D. W. HALE, being sworn, deposed as follows:

Examined by Mr. McCROSKEY:

Q. What is your age?
A. Forty-nine.
Q. Where do you reside and what is your occupation?
A. I reside at Maryville, Tennessee; my occupation is a land surveyor.
Q. How long have you been a surveyor and what actual experience and work have you done?
A. I have been a surveyor for thirty years. I have surveyed about all the mountain lands in Monroe County, a good portion of the mountain lands in Polk County and Blount County and a great

deal of mountain land in the Cumberland mountains both in Tennessee and Kentucky.

Q. Are you the same W. D. Hale whose deposition was taken in the original cause of Hebard vs. Belding?

1623 A. Yes.

Q. Since the newly discovered map has been found, I will ask you if you have been on the ground for the purpose of locating the line, taking said map as your guide?

A. Yes.

Q. How much experience and how much time have you devoted in the original suit and since the Nashville map was found have you spent in undertaking to locate the State line at the place in dispute?

A. Something like three months in all.

Q. How much time did you spend during the original suit, and how much time have you spent since this map has been discovered?

A. Approximately two and one-half months in the original suit; one-half a month since the discovery of the map.

Q. Have you had any other experience in locating the State line other than in the Slick Rock section, and if so, state where and how much work you have done in doing so?

A. I have had some experience in locating the State line between Blount County, Tennessee and Swain County, North Carolina, near the Sevier County line, and at different points along the line adjoining Blount County, Tennessee, and more especially from the 59th mile tree to the Tennessee River; and I have surveyed the State line from the Tennessee River to the Hiwassee River.

Q. Are you then familiar with the linemarks and mile trees as indicated along the line of the Sevier County line, from Sevier County to the Hiwassee River?

A. I am familiar with the line marks. I don't know of but two mile trees standing. Well, I might correct that; I know two undisputed two mile trees and one is called the 86th mile tree. As to whether it is correct or not, I am not in a position to say.

Q. Please state what mile trees you know that are undisputed?

A. The 50th mile tree and the 59th mile tree.

Q. You have seen both of those trees then?

1624 A. Yes, sir.

Q. State whether or not you have taken the newly discovered map and gone upon the ground at the places now in dispute and undertaken to locate the State line, taking said newly discovered map as your guide?

A. I have.

Q. Please state what you did as a preliminary before going upon the ground and who, if any, were with you assisting?

A. O. W. Muller was with me assisting with scale and protractor to get as nearly as possible the courses and distances from the newly discovered map. Then I went on the ground at the 59th mile tree and attempted to run the State line by those courses and distances.

Q. State whether or not you found anything on the newly discovered map that indicated mile points; and if so, what?

A. I found circles on the map at certain intervals that I judged

by counting them were intended to indicate the ends of the miles, and by scaling, too.

Q. The scale of said map I believe is 800 poles to the inch?

A. Yes, that is the scale given on it.

Q. Did you find those circles about corresponding as indicating a mile upon said map?

A. Approximately; some are longer and some are shorter.

Q. But before going into the thing on the ground to do the work, state whether or not you undertook to get the degrees and angles as indicated upon said map in the neighborhood of the disputed territory?

A. I did; that was the work that O. W. Muller assisted me in.

Q. State whether or not it was possible to get an accurate and correct degree and angle of that line as indicated upon that map?

A. No, because of the scale of the map being so small I could only get an approximate course and distance of it.

Q. I understand then, you did the best you could to get the degrees and angles before going upon the ground?

A. Yes.

Q. When you went upon the ground where did you begin your work?

1625 A. At what we counted to be the 59th mile tree.

Q. Did you then undertake to run the line in accordance with the degrees and angles as indicated upon this newly discovered map?

A. Yes.

Q. From the 59th mile tree going southwest to the river, state whether or not there is any dispute as to the location of the State line?

A. I never heard of any. I have been with a good many of the natives of that country and talked with them about it, and I never heard of any dispute.

Q. Where is the 59th mile tree with reference to the State road run, from Tennessee to North Carolina?

A. It is two and one-half miles northeast of the State road.

Q. Then you tried to run a line in accordance with the degrees and angles as shown upon the newly discovered map from there to the Tennessee River, did you?

A. Yes.

Q. Were you able to follow the marked trees on top of the ridge from that point?

A. No.

Q. Please explain whether you were on one side or both sides of the top of the ridge, and if so, how far did you get from the top of the ridge where the State line marks are at any point?

A. In the first mile run southwest from the 59th mile tree, I got something like 300 yards on to the North Carolina side; in the second mile, I crossed on to the Tennessee side and got more than half a mile down off the mountain across streams and spurs and ran down a stream a good ways. When I crossed the pike road I was, by the distance on the pike road, judging by walking it, at

least a mile from the State line, following the State road. Then in the next mile I crossed into North Carolina a quarter of a mile from the State line; then I crossed back into Tennessee and got from one-half to three-quarters of a mile from the State line.

Q. From your efforts and the work you did there, and your knowledge of the State line, is it possible to take said newly
1626 discovered map and with it locate the State line as indicated along the territory where it is undisputed?

A. No, it is not. The map instead of being an aid to locating the State line or finding the State line, is rather a hindrance.

Q. Have you heard the testimony of D. B. Burns and C. Z. Denton taken yesterday and today in this suit?

A. I have heard part of it; I didn't hear very much of Mr. Denton's.

Q. Did you hear*d* them tell where the undisputed State line struck the Tennessee River?

A. I did.

Q. Half a mile above the mouth of Slick Rock Creek?

A. Yes.

Q. State whether or not there is where the marked trees—in fact, show that the State line does strike the Tennessee River?

A. It is.

Q. Crossing the river and taking this newly discovered map as your guide, is it possible to locate the line up Slick Rock Creek?

A. No.

Q. Please explain why?

A. Why, crossing the river at right angles as indicated by the map you would be half a mile east of Slick Rock Creek, and taking the bearings as near as can be ascertained from this map and following them, and you will be crossing back and forth across the ridges and foothills and not be on Slick Rock Creek, and except in one or two places you won't approach Slick Rock Creek any less than a quarter of a mile.

Q. This map shows that the Commissioners crossed the river at or near the mouth of some stream. Please state whether it is possible from your previous experience in surveying for that to be Slick Rock Creek?

A. No. Following the track of the Commissioners to the river, and then following the courses of the map, as indicated you would be entirely east of Slick Rock Creek and half a mile east. While the creek on that is shown on the east side of the line instead of the line on the east side of the creek. In my opinion that is
1627 only a sketch map and have sketched Cheah River on that Slick Rock Creek.

Mr. McQUEEN: Defendants, by solicitor, excepts to so much of the above answer as contains the opinion of the witness.

Q. You say you have been surveying for 30 years?

A. Yes.

Q. Have you been pretty constantly in the work for that length of time?

A. Yes. During the first fifteen years of that time I served about seven or eight years as County Surveyor in Monroe County, and the last fifteen years I have been constantly at work; I have followed no other occupation except surveying and timber estimating.

Q. Do you consider yourself an expert in locating land lines?

Mr. McQueen: Complainants except to the above question, because it is a matter to determine from the testimony of the witness as to whether or not he is an expert and not for the witness to say.

A. I have been used as an expert for the last fifteen years.

Q. Now, you give it as your opinion that the Commissioners indicated that stream as Cheah River. Please explain your reasons for thinking so?

A. The track of the Commissioners of the marked trees show that they struck the river fully one-half mile east of Slick Rock Creek. Cheah River is the first stream of any size east of the line—it is about one mile east of the line—and is the stream that would naturally show on the east side of the line. And the description in the Cession Act of the State line from Tennessee River to the main ridge would naturally take the Commissioners from the river direct from the point at which they struck it and crossed it, up the ridge, that is east of Slick Rock Creek and west of Cheah River.

Q. Are there any spurs north of the river running down from the main ridge that terminates on the Tennessee River near the mouth of Cheah River?

A. Yes.

Q. State whether or not that is one of the prominent spurs of the mountain?

A. Yes. From the point at which the state line leaves this ridge that leads off towards Cheah River, the one leading towards
1628 the mouth of Cheah River is the main ridge for a considerable distance, the marked State line dropping down off of the main ridge or a minor ridge.

Q. This which you call the main ridge for some distance I notice, as I understand you, at or near the mouth of the Cheah River?

A. Near the mouth, I don't know whether it is right opposite the mouth or not; the ridge forks; I didn't go to the end of the ridge; I went out at a high point some—between a quarter and half a mile searching for the line.

Q. I will ask you if on the opposite side of the Tennessee River and near the mouth of Cheah River there is another spur or ridge that leads to the main Hangover ridge?

A. There is. Just below the mouth of Cheah River, you might say within a couple of hundred yards from the mouth of Cheah River there is a ridge butts off that leaves the Hangover Ridge near the Sourwood Gap.

Q. How far is the Sourwood Gap from the river?

A. It is about one mile.

Q. So that spur would then be about a mile in length?

A. Yes.

Q. Extending from near the mouth of Cheah River to the main Hangover Ridge?

A. Yes.

Q. State whether or not these two spurs, the one on the north side and the one on the south side, would be as convenient or more convenient than any other spurs, if parties were strangers to the country and were trying to cross the river and reach the ridge on the opposite side, to follow, I mean?

A. In some respects, it would be more convenient. In crossing the river especially. Just below the mouth of Cheah River there is an eddy in the river in which parties can cross over on a raft or a boat—a raft it would be at that eddy, while lower down there is no eddy at which they could cross for two or three miles with any degree of safety.

Q. North of the river is there any spur of the main ridge that terminates at the river near to and opposite the mouth of Slick Rock Creek?

1629 A. Yes.

Q. If so, what spur and how does it run?

A. There is a spur there called Lester Ridge, which runs about southwest and terminates opposite the mouth of Slick Rock.

Q. State whether or not you surveyed up and down that ridge or went up and down that ridge?

A. I first went down the ridge searching for marks from its junction with the State line ridge to the river. Then I surveyed that ridge from the river opposite the mouth of Slick Rock back to its junction with the State line ridge.

Q. Is that ridge accessible?

A. Yes, sir, I have been up and down it, at two or three different places; I have surveyed up and down it.

Q. The State line both on the north and south side of the river on this newly discovered map, shows a shading on the left hand side as they are going southwest. Please state what that shading indicates to you as a surveyor?

A. It would indicate that the slope of the ridge was on the side where the shading is.

Q. State whether or not it indicates that they were on a ridge?

A. They were on the ridge, or the slope would not be on that side.

Q. Do I understand that they were on top of the ridge by the indications of this map here?

A. That is the way it indicates to me.

Q. As a surveyor?

A. Yes; had they been on the side of the ridge the etching would have crossed the line.

Q. On the south side of the river, state whether or not it indicates to you there that they are following the top of the ridge as it does on the north side of the river?

A. It does after a distance from the river.

1630 Q. Examine the map carefully near the mouth of the stream or the creek marked "creek" on the map, and state whether it shows that it follows directly up the stream or

whether it angles off from it, giving your answer from your knowledge and experience as a surveyor?

A. It appears that for a little more than a half a mile the line follows close to the stream. It then turns at an angle of about sixty degrees to the right or westward and runs something like one-eighth of a mile; then turns at an angle of about somewhere from seventy-five to ninety degrees to the left or eastward and runs about one-eighth of a mile, possibly a little more. It then turns at an angle to the right of about sixty degrees and runs about one-eighth of a mile, leaving the creek. It then turns at a very slight angle, possibly ten degrees more to the right or westward, and runs another one-eighth of a mile, getting still further from the creek; it then turns at an angle of about sixty degrees to the left or eastward and runs something like one-eighth of a mile——

Q. That is as far as my question would carry you——

A. About parallel to the creek. This brings it to what appears to be the crest of the ridge, there being etching on both sides and sloping both ways.

Q. Is there any ridge in the neighborhood of the mouth of Slick Rock Creek that could possibly conform to this map?

A. Why, I don't know of any ridge in Tennessee or North Carolina that would fit to that map.

Q. Is there any in the neighborhood of the mouth of Slick Rock Creek that could possibly conform to that line as indicated on that map?

A. No.

Q. I lay before you a map filed as Exhibit to your deposition in the original suit. I will ask you if you recognize it?

A. I do.

Q. Near and below the mouth of Slick Rock Creek a ridge runs northwest; please explain how that ridge runs and what it connects with?

A. The spur that ends at the mouth of Slick Rock Creek runs up and joins to a mountain that runs into the bend of the
1631 Tennessee River, a continuance of that mountain to Stiff Knee Gap and Stiff Knee Knob, and there makes an acute angle to the left and runs up to the Little Fodder Stack and continues on and runs nearly south to the Big Fodder Stack, then southeast to its junction with the Hangover lead.

Mr. McQueen: Complainants except to the foregoing question and answer, because it is testimony bearing upon the line as located by the witness in the original proceedings in this cause and because it is a repetition of the testimony of the witness in the original proceedings in this cause, and not pertinent or germane to the question involved in the bill of review as to newly discovered testimony.

Q. State whether or not that ridge extending from near the mouth of Slick Rock Creek westwardly to Stiff Knee can possibly conform to the line as indicated on the newly discovered map?

A. No.

Q. Why?

A. Because the angles and distances of that newly discovered map won't follow the ridge or anywhere near the crest of the ridge.

Q. State whether or not there are any other ridges or spurs between this ridge mentioned on the original map and Little Slick Rock Creek, and if so, tell in a general way how they run?

A. There are quite a number of spurs that run off from that ridge marked "Slick Rock Ridge" on this map running southeastward and terminating at Big Slick Rock some nearly south and terminating at Little Slick Rock.

Q. Is it possible for said newly discovered map to conform to either one of those spurs?

A. No, sir.

Q. I see on your original map a spur or ridge extending westward and terminating at the junction of Big and Little Slick Rock; state whether or not it is possible for the newly discovered map to conform to that ridge?

A. No.

Q. Why?

1632 A. It don't run in the right direction, either for the general course or for any of the angles that would extend the distance shown by that ridge.

Q. I now refer you to the map, Exhibit "B" to the deposition of D. B. Burns, and ask you if the red line north of the river approximately shows how the State line runs and reaches Tennessee River from the north?

A. Yes.

Q. Does it approximately show where the line strikes the river?

A. It does.

Q. About half a mile above the mouth of Slick Rock Creek; is that correct?

A. Yes.

Q. On the south side of the river, Mr. Burns' map indicates that the line runs up Slick Rock Creek and with its meanders to or near the junction of Big Stack Gap Branch with the main creek, and thence up a spur at or near Big Fodder Stack. Is there anything on the newly discovered map to show that by any possible means the line as projected upon said newly discovered map followed Slick Rock Creek as indicated upon that map?

A. I don't see anything on it that would show that that is called Slick Rock Creek or any other creek—that distance. This map very clearly shows to me that within a mile and a half from the river they were on the crest of a ridge and followed the crest of the ridge somewhere, I don't know where.

Q. Is it possible for you or any other surveyor to take that map and indicate what ridge they were following?

A. Well, I do not see how it is.

Q. Could you do it?

A. No, the map is so inaccurate, the scale so small, no names given to the mountains or streams, that I wouldn't know how to follow the line by that map. And beyond what I know of the line the map is confusing even where the line is undisputed and misleading.

Q. State whether or not the general course of the contour of the map showing the southwesterly course is approximately correct?

A. Approximately it is. As a sketch map to show that they
1633 followed the crest of a ridge and across streams, it would be a correct map for that purpose. But as for showing what ridge they followed or where they crossed streams, the map is not worth the paper it is on.

Q. Further on southwest the map indicates that they run around the head waters of Tellico River. I will ask you if you with any other surveyors actually surveyed the ridge or what you understand to be the State line ridge run around the head waters of the Tellico River, and if so, what surveyor was with you?

A. O. W. Muller and J. K. Wilson were with me and we surveyed the water shed around the Tellico River.

Q. Is J. K. Wilson living or dead?

A. He is dead.

Q. How long has he been dead?

A. About ten years, I think; maybe longer.

Q. State whether or not this newly discovered map shows the correct contour of the ridge running around the head waters of Tellico River, and if not, please explain from your actual knowledge from actual survey where the discrepancy is?

A. It don't by any means show the correct contour of the ridges. It merely shows that they went around the ridge around the head of Tellico River, but it don't properly locate that ridge. At points on that map the ridge is one mile or more wrong. At the point called Rocky Knob I think if properly plotted on that, would fall at least one and one-half miles from the line as shown there.

Q. You are speaking now from your actual survey and actual knowledge of the topography of the country?

A. Yes.

Q. State if you continued the line to the Hiwassee River as indicated on this map and as shown by the marked trees and also crossing the river?

A. I continued it to the river; I did not cross the river, that is, I did not run the line across the river.

Q. If there is any inaccuracy of the line at the crossing of
1634 of the Hiwassee River, please explain that?

A. It shows a line crossing Hiwassee River diagonally one time. The line actually crosses Hiwassee River three times, leaving in the bend on the side between the crossings ten or twelve acres of bottom land, that is not shown on this map.

Q. As a surveyor of experience, would you have located a line up Slick Rock Creek for a distance of five miles following the creek and had afterwards platted the same, would you have shown the creek as you followed it?

A. I certainly would.

Q. State from your knowledge of other and experienced surveyors whether they always in surveying and platting, indicate on their plat the streams and especially if they follow a stream for that distance?

A. They nearly always indicate on their maps streams that are of

any prominence whatever, and especially where they run with a stream it is indicated on the map and in the notes; first in the field notes and then on the map as platted from the notes, especially streams of the volume of Slick Rock.

The deposition of this witness is here classed subject to cross-examination by the complainant at a future date. This is done at the instance of counsel for W. R. Hopkins et al., but not by the consent of counsel for the other side.

And further deponent saith not.

W. D. HALE.

Sworn to before me this May 8th, 1908.
[SEAL.] R. S. C. HUTCHINSON,
Notary Public.

W. D. Hale, sixteen miles, two days.

Stipulation.

It was agreed by and between counsel that the notary public might sign the name of the witness to this deposition without his having read the same before being signed.

1635 Mr. W. D. HALE, the next witness called for cross-examination, deposed and said as follows:

Cross-examination by Mr. MATTHEWS:

Q. When you went out this last spring that you made this last survey with this map of 1821, had you, either by yourself or in connection with Mr. Muller, taken the bearings off of this map, leaving out the ground—just the bearings as shown on this map of this state line?

A. Yes, sir, took each course separately.

Q. From a point how far did you start north? I mean from a point how far north did you start?

A. From the fifty-ninth mile post there, beginning on the map, and from the twenty-fifth.

Q. And how far did you go across here? (Referring to map.)

A. We went about twelve miles, I think, south of the river. That is, we took the bearings and distances from the map about twelve miles south of the river.

Q. And in taking the bearings did you take the bearings as shown on this map?

A. No, sir; we didn't take any general bearing. We took each particular course as shown on the map separate and by itself.

Q. Did you make any notes?

A. I think Mr. McCroskey has those notes. I had a copy of them, and I think I turned those notes over to Mr. McCroskey with the map.

Q. Could you, if those are accessible to you, produce those notes in the morning?

A. They are not accessible to me for that early production.

Q. Could you not, then, prepare those from this map, if you are furnished with such instruments as are necessary, and give us the same information as Mr. Muller was asked to give?

A. Yes, sir.

Q. Could you do that so as we could have it by tomorrow morning?

A. By noon tomorrow I could, but not only by tomorrow morning.

1636 Q. The first seven miles and the next three miles—the general bearing for that seven miles and the next three miles—and then if it — possible for you to produce those notes before, I would like to have them.

A. I don't think I have them now, and don't think I can produce them.

Q. You will give us this as early as you can in the morning—those general bearings for those distances—you will give us that?

A. If I have the instruments I will.

Mr. MATTHEWS: I am through then. We will have to ask for an adjournment, then, tonight, Mr. McCroskey.

Mr. MCCROSKEY: Why? Can't you take some of the other witnesses?

Mr. MATTHEWS: If we can get that information I think we can roll it off very rapidly tomorrow.

Mr. STONE: May I ask how long you expect to continue taking testimony here—any longer than tomorrow?

Mr. MATTHEWS: Not on this branch. We expect to get through. Possibly some documentary evidence we will want. If we get that early in the morning I think we can get through tomorrow.

Mr. STONE: My object in asking that I was going to take that train for Cincinnati tomorrow.

Mr. MATTHEWS: I think we can possibly get through by noon tomorrow.

Mr. STONE: You don't expect to continue next week?

Mr. MATTHEWS: Oh, no.

Mr. MCCROSKEY: Of course; we will have to do that. Remember we have been here all day waiting for something to turn up. I wish you would push the matter as rapidly as possible. I would be glad if you could take some of your other witnesses then and go ahead with it.

Mr. MATTHEWS: It will shorten the matter very much.

Mr. STONE: What time will you meet in the morning? Suppose, then, we adjourn until 9:30.

Mr. MATTHEWS: All right.

After some discussion, the further taking of proof in this cause was adjourned, by consent, to the same place at 8:00 o'clock a. m., sharp, January 9, 1909.

1637 W. D. HALE.

Sworn to before me this January 9, 1909.

[SEAL.] R. S. C. HUTCHINSON,
Notary Public, Knox County, Tenn.

Forty-five miles; three days.

W. D. HALE, a witness on behalf of the complainants.

Continuation of cross-examination by Mr. MATTHEWS:

Q. Mr. Hale, did you do any work last night, or this morning, to obtain an answer to two questions that were put last night and reiterated this morning, just now to the witness, Muller?

A. Yes.

Q. What did you find to be the general course of the line indicated on the map of 1821, from the point where it leaves the river on the south side, for a distance of seven miles to where it bends to the east, or to the left, as you look down in that direction, what is that course? Give the general bearing of it?

A. South 44¼ west.

Q. Now, did you obtain also the general bearing of the next three miles on that same map, after leaving the elbow made by that turn to the east or left that I have just mentioned?

A. Yes.

Q. What is the general bearing of that?

A. South 20 degrees east.

Q. I notice a couple of lines put onto this map of 1821, exhibited in this case and labeled north 44¼ east, and then running off to the left, north 20 west, did you put those there?

A. Yes sir, that is the reverse of the courses I have just given.

Q. Now, what did you ascertain to be the courses from your map called "the Hale map" in this case from the point that I have mentioned first, the Hangover and then to the junction?

A. From the river to the Hangover is south 8 west; from the Hangover to the junction south 60 west.

1638 Q. Will you take this map of 1821 and plat on it the line south 8 degrees west, and then south 60 degrees west that you have just mentioned, commencing at the point on this map of 1821, where the State line is shown to cross the Tennessee River and commencing on the south side of that river?

A. Yes, I have so platted it.

Q. Mr. Hale, will you take this map of 1821 and put all of those lines on it in red ink?

A. The lines I have platted?

Q. Yes, both sets of lines.

A. Let me understand what line it is you want.

Q. These lines, in the first place, that I first asked you about, starting to——

A. The first seven and the second three?

Q. The 44¼ and the north 20 west, and also this last set of lines

that you have put on there and marked the bearings also on the last lines?

A. I have done so.

Q. Mr. Hale, in making these last surveys since you had this map of 1821, did you use a transit?

A. Yes, I believe I did; I am not positive now, whether I used a transit or a compass; I think I used a transit.

Q. If you used a transit what kind of a transit did you use?

A. A Gurley—or a reconnoissance.

Q. But you are not sure that you used one at all?

A. No, sir, I am not sure whether I used a compass or a transit.

Q. Did it have the Vernier attachment?

A. Yes, sir.

Q. Describe what is a Vernier?

A. A Vernier is a contrivance on the compass for reading the angles less than a degree.

Q. On the compass or on the transit?

A. On either.

Q. When you spoke of a Vernier being on the compass or the transit, either one, were you speaking of the same kind of a Vernier?

1639 A. Yes, the same system.

Q. I am not speaking of the same system; but I am speaking of the same description of make, or the description of the Vernier.

A. There is a slight difference in a Vernier on a transit and on a compass. The transit has variations—Verniers and angle Verniers—Verniers to the limb and Verniers to the graduated circle. While the compass only has Verniers to the graduated circle or variation for it.

Q. Is the Vernier on a compass for the purpose that you stated——

A. Of turning off the variations and graduated angles smaller than a degree.

Redirect examination by Major McCROSKEY:

Q. Taking up the map of 1821 and looking at it as an experienced surveyor, beginning north of the river, how does the map indicate that the surveyors ran, on a mountain or following the streams?

A. On the crest of the mountain.

Q. Please explain definitely, from your standpoint as a surveyor, why you say they followed the crest of a mountain?

A. Because the mountains and ridges are indicated on the map by etching; the streams are indicated by solid, irregular crooked lines, and the State line as marked here follows the etching north of the river.

Q. Then, from your standpoint and knowledge as an experienced surveyor, the etching and markings on the map north of the river shows that the surveyors unquestionably followed the crest of a mountain?

A. They certainly did.

Q. State whether or not that indicates that they followed a continuous ridge or was that ridge broken by streams?

A. It seems to be a continuous ridge from the Big Pigeon River to the Tennessee River.

Q. Is there anything on either side of the line north of the river to indicate streams, and if so, definitely point them out, so that the Court may understand?

A. On the northeast of the line there is Little Pigeon River, the west fork of Little Pigeon, Little River and Abrams Creek,
1640 all heading near the line; on the southeast side of the line there is Big Creek, Deep Creek, and a creek and a number of streams not named, heading near the line and flowing southeastward; while those northwest of the little slope northwestward, as indicated by the map.

Q. Looking at the map itself, and from your own experience, state whether or not the line indicated as the State line shows that they are following a leading ridge or mountain dividing the water courses?

A. The line on the crest of a ridge, that is the water shed between the streams on the northwest on those on the southeast all the way from the Big Pigeon River to the Tennessee River.

Q. Speaking again from your knowledge as a practical and experienced surveyor, when they reached the Tennessee River, what does the map indicate they did?

A. They went directly across it.

Q. From the map, is there any question in your mind that they did go directly across?

A. None.

Q. After crossing the river to the south side, looking to the map and speaking from your own knowledge and experience, what does it indicate from the face of the map itself? Does it show that it followed the leading ridge, or that it follows stream? Please explain fully what it does show, from your knowledge and experience, looking to the map alone?

A. It appears that at a distance of about two miles from the river they reached the crest of a ridge which is a water shed, and a continuous ridge from the Tennessee River to within two miles of Hiwassee River. Immediately after crossing the river, from the map it appears that they followed close to the stream for something like two-thirds of a mile, and then left the stream for probably one-sixth of a mile; then returned to near the stream in the next one-sixth of a mile; then left the stream for good and climbed on top of the mountain. From this map it would be hard to tell whether they were immediately on the stream or in the vicinity of the stream.

1641 Q. Are you familiar with the topography of the country immediately at the mouth of Cheoah River, and also at the mouth of Slick Rock Creek?

A. Yes.

Q. State whether or not it is very mountainous at the mouth of either of those streams; is it not mountainous, or is it mountainous?

A. It is very rough and mountainous in the whole neighborhood around there, at the mouth of each of the streams and above and below the streams.

Q. Is it or not a fact that immediately upon leaving either of the streams, as above indicated, you at once began ascending hills or spurs of the mountains?

A. Yes. The mountains butt down to the river and streams throughout the whole section, and you cannot get away from any of these streams without climbing the mountain.

Q. The question I want to get at, Mr. Hale, bearing directly upon the line as it leaves the river on the south side, is whether the line, as indicated on this map of 1821, shows that it follows a stream directly, or whether it is ascending the slope of the mountain or ridge next to the stream, speaking from your personal knowledge of the localities?

Mr. MATTHEWS: I object to this question and all questions that have gone before it, on the ground that it is not proper re-examination or rebuttal, because these matters have all been gone into on examination-in-chief.

A. The first two-thirds of a mile from the circle on the south bank or at the south bank of the river is hard to determine whether or not they were following the stream or were ascending the mountain. After that, speaking from my knowledge of the country and experience as a surveyor, I would say they were ascending the mountain.

Q. South of the river, what leading ridge do you find to fit or compare with this map of 1821?

Mr. MATTHEWS: Objected to as having been gone into fully on examination-in-chief and as not being proper rebuttal.

A. I find the watershed dividing Slick Rock Creek and
1642 Citico Creek from the waters of Cheoah River and Snowbird.

Q. From your knowledge and experience as a surveyor, and your familiarity as a surveyor with the topography of that country, and actually having run lines in that section, is there any other possible way of locating the lines by following a ridge or leading ridge except over the Hangover Ridge. I mean this line here (indicating on map of 1821).

Mr. MATTHEWS: I object to that question for the same reason given to the previous questions.

A. No.

Q. To be more explicit, I am speaking now of that part of the map south of the river. Do you still adhere to the same answer?

A. I do.

Q. Looking at the map of 1821 still, and as explanatory to the topography of that country, I will ask you to again refer to the original map filed by you in the original case, called the Hale map, how many leading ridges are indicated upon that map?

A. Two.

Q. What are they?

A. The Fodder Stack lead and the Hangover lead.

Q. How are they shown or sketched upon that map?

A. They are shown by etching a number of lines of etching through each ridge.

Q. What do the numbers of lines of etching indicate?

A. The relative height of the ridges.

Q. From one line to another, how high is its altitude?

A. I do not remember the altitude.

Q. I mean from one line to the other.

A. I do not know the altitude from one line to the other. They are supposed to represent about one hundred feet between lines of etching.

Q. Those two ridges, the Hangover and Fodder Stack—what section of country do they inclose?

A. The Slick Rock Basin.

1643 Q. The Fodder Stack, as I understand it, is on one side and the Hangover on the other of Slick Rock Basin?

A. Yes; The Fodder Stack to the west and the Hangover Ridge to the east.

Q. Are there any other leading ridges in that section of the country but the two from the Tennessee River going south or southwest?

A. No, not from Tennessee River in the vicinity where the State line touches the river.

Q. Looking again to the map of 1821 and south of the river, are there any other leading ridges indicated upon that map except the leading ridge indicating the State line as shown upon the map?

A. I see none.

Q. Down the river from the mouth of Slick Rock Creek perhaps two miles, you observe something sketched there as indicating a ridge or something else. Please state what that sketching from your knowledge as a surveyor, indicates?

A. It indicates a sketch to me.

Q. Of what?

A. Of an imaginary ridge.

Q. Is there any ridge in that section of the country, Mr. Hale, that could fit that sketching?

A. There is a ridge that might be tortured into fitting it. The Salt Springs Ridge or Salt Springs Mountain.

Q. Does it run that near to the Tennessee river?

A. Well, at places it is as close as that. No, I will take that back. I do not believe it approaches that near the Tennessee River. It is only about three miles, while the Salt Springs Ridge is seven or eight miles.

Q. State whether or not it is a fact that the Salt Springs Ridge ever reaches the Tennessee River or as a matter of fact does it reach the Tennessee River?

A. No.

1644 Q. Further along on this map of 1821, there is several etchings and sketchings at the end. Does that fit the topography of any mountain in that section of the country, or does it mis-fit them?

A. I see one ridge there that might fit the Sassafras mountain. No, it don't. I will take that back. Just strike that out.

Mr. MATTHEWS: No, don't strike it out; just take it back.

A. I will take it back. I did not see any ridge on that map that would fit any branch or minor ridge of that country. This is referring to any part between the Hiwassee and the Tennessee River.

Q. The map of 1821, shows the line crossing the Tennessee River at or near some stream. The map says "Creek." From your knowledge of the line and location, is there any stream in the vicinity of where the line actually crossed the river that would fit this map as located, and if so what stream?

A. There is no stream of any size in less than half a mile where the line crossed the river. The shape of that stream as indicated on the map would come nearer to fitting the Cheoah River a mile or something more above where the line crosses than any other stream that I know of.

Q. Why do you say it comes nearer fitting Cheoah River?

A. The Cheoah River approaches the Tennessee River in approximately the same course that this stream approaches the river. From the river, a distance unknown to me, but something like the distance shown on this map, it makes about the same bend eastward that this stream makes.

Q. Can it be construed to fit the Slick Rock Creek?

A. No.

Q. Why?

A. Because Slick Rock Creek has nearly the same general bearing for several miles from the river.

Q. You mean running back up the stream from the river?

A. Going up the stream from the river.

Q. You mean by that that Slick Rock Creek has as a matter of fact a bearing or the same bearing or a uniform bearing to the Tennessee River?

Mr. MATTHEWS: I object to that question as leading.

1645 A. I mean to say as a matter of fact and location of the ground, *of* Slick Rock Creek, has about the same general bearing from five miles up the stream to the river and not as pictured on this map.

Q. I will ask you if in your former investigation and in giving your deposition you had the calls of the State line as made by the Commissioners' report as a part of the Code of Tennessee read over to you and are you now familiar with those calls?

A. Yes, a portion of them. I carried a copy of them in the woods.

Q. Taking the calls as reported by the Commissioners and this map, and speaking from your knowledge and experience as a surveyor, where did those Commissioners locate that State line?

A. On Slick Rock lead; no, on the Hangover lead.

Q. Why did you say first the Slick Rock lead?

A. It was a slip of the tongue.

Q. From your knowledge and experience as a surveyor and from your knowledge of the State line as located, can you explain why a stream has been sketched in so near the State line, and if you can, please explain?

Mr. MATTHEWS: I object on the ground that the question is asking for an opinion for doing a certain thing in 1821, by certain commissioner- long since dead who left no record of why they did this in locating the State line.

A. As a surveyor in approaching the Tennessee River, from the northeast, when you reach a point about a mile from the river looking southwest, you can see the gorge where two streams approach the river from the south. The line as marked indicates that the Commissioners reached the river between those two streams at a point where neither could be seen. The stream on the map indicates from its general trend that they sketched the stream that was to the left giving it its general trend, but drawing it closer to the line than [illegible] ually approaches.

Q. Mr. Hale, this map of 1821, shows the scale of eight hundred poles to the inch. How many miles to the inch would that be?

A. Nearly three miles; two and one-half miles.

Q. To be exact, how many miles are 800 poles?

1646 A. It is two and one-half miles.

Q. Taking your knowledge and experience as a surveyor and this map as exhibited to you, is it possible to take and follow the exact track of the surveyors or is it more of an outline or picture map of what the Commissioners did?

A. I take it as a sketch map and utterly worthless without the report of the Commissioners.

Q. Why do you say it is utterly worthless without the report of the Commissioners?

A. Because you cannot take that map and scale the courses and distances they have given and follow the actual marked line at any point that I have ever tried it.

Mr. HOPKINS: You mean that you cannot do so?

The Witness: Yes, I cannot.

Q. Taking the map as exhibited and the report of the Commissioners with which you say you are familiar, what is the inevitable result in locating the State line south of the river. Taking the map and the report, is the theory that the State line crosses the river, ascends the highest range of the Hangover and follows along the highest point thereof, not more consistent than the theory adopted by the Commissioners in this case?

Mr. MATTHEWS: I object to that question as leading.

A. Yes.

Q. That is the map and the report considered together?

A. That is the way your question read.

Recross-examination by Mr. MATTHEWS:

Q. You said awhile ago, Mr. Hale, that there is no stream where the line crosses the Tennessee, corresponding to the stream marked "Creek" on the map of 1821. When you say where the line crosses the river, do you mean where it crosses on that map, or where you testified it crosses just opposite the bluff of the Hangover Ridge?

A. I mean at the point on the south side of the river, opposite the marks of the State line on the north bank of the river.

Q. As shown on the map of 1821?

1647 A. As shown on the ground.

Q. As you stand on that spot that you have spoken of, about a mile north of the river and looking directly at the river, having reference to the angle at which the line still further north approaches that point (a general course, I mean, of the line) on which hand is Slick Rock and on which hand is the Cheoah River?

A. Slick Rock is on the right hand and Cheoah to the left.

Q. And about how far apart are they, Slick Rock Creek and the Cheoah River?

A. From a mile and a half to a mile and three-quarters.

Q. How long have you known the Cheoah River by name or tradition or other wise?

A. About 15 years.

Q. Do you know on the ground now, without reference to any map, what are the comparative courses of those two streams, the general courses of those two streams?

A. Slick Rock runs a general course Northeastwardly for several miles, while Cheoah runs, I think, nearly Northwest for several miles, then turns about North to the river, is my recollection, speaking from memory only.

Q. Cheoah River is a much larger stream, isn't it, than Slick Rock Creek?

A. Not a great deal larger. No, sir.

Q. Cheoah River runs over to Robbinsville, does not it? The County seat of Graham County, North Carolina?

A. Oh, no, sir; I am not familiar with it more than a couple of miles from its mouth.

Q. Does not it drain nearly the whole of Graham County, North Carolina?

A. I think it does; I am not positive about that.

And further deponent saith not.

W. D. HALE.

Sworn to before me this January 9, 1909.

[SEAL.] R. S. C. HUTCHINSON.
Notary Public, for Knox County.

One witness 4 days.
Mileage 130.

1648 And now as supplementing the testimony of said Hale in said case of Hebard v. Belding, et al. and said bill of review case of William R. Hopkins and others v. Hebard, the defendant,

State of Tennessee, further examines said W. D. Hale in this cause as follows.

Thereupon said W. D. HALE, having been duly sworn in this cause, deposed and said:

Direct examination by Gen. CATES on behalf of the defendant, State of Tennessee.

Q. 1. How old are you Mr. Hale?

A. 52 years.

Q. 2. I will ask you to state if you are the same W. D. Hale who was examined in the case of Hebard v. Belding and others, both in the original case and under the bill of review filed therein, in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee at Knoxville?

A. Yes.

Q. 3. I will ask you to state Mr Hale whether since you were last examined in that case under the bill of review you have made further examination of the boundary line between the States of North Carolina and Tennessee between the point or points North of the Little Tennessee River and the Hiawassee River covering the places where the location of the line is in controversy in this cause?

A. Yes.

Q. 4. When, and under what circumstances, did you make such examination?

A. I made an examination in September, from the first to the 10th or 12th, somewhere along there.

Q. 5 September, of what year?

A. September of 1910—beginning the examination on the North side of the river at the 59th mile tree and continuing along the line to the Jenks Knob at the head of Tellico River.

1649 Q. 6. Who was with you on that examination?

A. C. B. McNabb. No, I didn't go that whole route in September. I only went over a portion of that in September, only examined North of the Tennessee River at that time, and with me was C. B. McNabb and John L. Williams, and the usual hands as we generally employ on surveys.

Q. 7. How long were you and Mr. Williams and Mr. McNabb out there on that line in September, 1910?

A. Some five or six days.

Q. 8. Now Mr. Hale, I will ask you to state whether or not you was over that line at another time, between the date on which you gave your deposition under the bill of review and September, 1910?

A. Yes, but I can't now give the exact date.

Q. 9. In order to refresh your recollection, I will ask you to state whether you were out there on that line in November or December, 1909?

A. It was during the Winter of 1909 and 1910, but without my notes to go by I couldn't give the dates.

Q. 10. Who was with you on that examination?

A. John L. Williams and Oscar W. Muller.

Q. 11. Is Mr. Oscar W. Muller the same Oscar W. Muller who was examined both in the original case of Hebard v. Belding and the bill of review filed therein?

A. Yes sir.

Q. 12. Well how long were you and Williams and Muller out there on that line, and what part of the line did you traverse?

A. We were out ten days or about ten days and we traversed the line from the 59th mile tree to Jenks Knob. We were over that, we didn't survey all of it, we were over that though.

Q. 13. Now in your examination in the Hebard-Belding case your attention was directed particularly to the controversy along the Hangover Ridge and the Slick Rock Creek, was it not?

A. Yes sir.

Q. 14. I will ask you to state if your subsequent examinations of that territory at the times you have stated confirmed or caused you in any way to doubt the opinion expressed by you in your testimony in relation to the true location of the State Line along what is known as the Hangover Ridge or lead?

1650

Mr. MATTHEWS: I object to that as forming a conclusion as to his other testimony without stating to him what it was, and it is incompetent and irrelevant and a repetition.

A. I have never found anything to cause me to change the conclusions that I have formed in my former examinations of the State Line.

Q. 15. As to its location at what point?

A. As to its location as testified to in the original suit on the Hangover and the lead from the Hangover to the Tennessee River.

Q. 16. Now I will ask you Mr. Hale if you are familiar with the contention of the defendant State of Tennessee in regard to the true location of the State Line around the head waters of the Tellico River?

A. Yes sir.

Q. 17. Have you surveyed out that part of the line in dispute?

A. Yes.

Q. 18. Now I will ask you whether you have made a map for use in this case showing the location of the State Line at the points in dispute, as in your judgment said location is, and also showing the general topography of the country around the places in dispute and a part of the line North of the Tennessee River?

A. Yes, I have made a map showing the State line in a part of the undisputed State Line, that part North of the river, and a part between the two contentions where it is undisputed and showing the State Line as contended for by each of the States. This don't purport to be a topographic map, simply shows the outlines.

Q. 19. Is this the map before you?

A. Yes sir.

Q. 20. I will ask you please file it as Exhibit No. 1 to your deposition?

A. I so file it.

(Here follows map marked Exhibit No. 1 to deposition of W. D. Hale.)

Q. 21. Now Mr. Hale, briefly, point out that part of the State Line on this map which is not in dispute in this cause, and also the
1651 true location of the line as you understand it to be at the disputed points?

A. At the North end or top of the map is marked 59th mile tree. From that point Southward by way of Dalton Gap, Locust Gap to hemlock on the North bank of the Tennessee River is undisputed. From that point by way of Sourwood Gap, Slick Rock Gap, Caney Branch Gap, Cold Spring Knob and Hangover Hao and Stratton Bald to Junction is, as I believe, the State Line to be. From hemlock down the river to the mouth of Slick Rock Creek, up Slick Rock Creek and up a spur of Fodder Stack Lead to near Big Fodder Stack, thence by way of Harrison Gap, Glen Gap and Cherry Log Gap to the junction is as contended for by the State of North Carolina. From the Junction Southward by way of Lick Rock Gap, Big Cove Gap, Stratton Grave or Knob and Laurel Top to where there is a Figure 5 in black ink South of dotted line is undisputed. From the Figure 5 by way of Mitchell Lick, Buffalo Stamps, Peckerwood Ridge, Cold Spring Gap, McDaniel Bald, Bear Pen Knob, Rocky Knob, Horshaw Knob to Jenks Knob is as I believe the State Line to be. From the Figure 5 by way of Grassy Knob following a dotted line on this map crossing Tellico River and up to Jenks Knob is as it is contended for by North Carolina. From Jenks Knob Southwestward is undisputed.

Q. 22. Now Mr. Hale, you have referred to a place which you called "Junction" at the point where the Big Fodder Stack Ridge or Lead joins itself to the main ridge; or, as we claim, the State Line. Will you please print on that map for convenience the word "Junction?"

A. I have so done it.

Q. 23. Now in your answer above you stated in substance that as you understood it a part of the State Line run from the hemlock on the North bank of the river down river on the North side to about opposite the mouth of Slick Rock Creek. Is that correct?

A. Yes sir.

Q. 24. Please indicate that line in red ink on this map, Exhibit No. 1, to your deposition?

A. I indicate it by a dotted red line on the North bank of the river.

Q. 24. Now I will ask you to state Mr. Hale whether this map showing the State Line between North Carolina and Ten-
1652 nessee as you have testified you believed it to be was made from actual survey—surveys made by you at different times?

A. Yes sir, except a small portion of Slick Rock Creek that I did not survey but took from a survey made by Daniel W. Hoyt.

Q. 25. My question was intended to be restricted to the line which you have testified to be the boundary line between the States as you believe it to be, but I see you understood it in a broader sense—then do I understand you to mean that what is shown on this whole map in respect of the lines in controversy was made from actual survey,

except a part of Slick Rock Creek which you took from a survey made by Daniel W. Hoyt?

A. Yes, all that map showing the State Line and its controverted parts was made from field notes of my own survey, except probably a half mile or may be a little more than a half mile of Slick Rock which was taken from Hoyt's survey as stated.

Q. 26. Now what part of Slick Rock Creek?

A. About one-half mile of the Creek immediately below and North of the mouth of Little Slick Rock Creek, may be three-quarters of a mile.

Q. 27. North or Northeast?

A. Northeast.

Q. 28. Now I will ask you to state whether or not you surveyed these ridges leading from Big Fodder Stack to the Junction?

A. Yes.

Q. 29. Have you also surveyed the ridges between Big Fodder Stack and the point which you have designated as Little Fodder Stack?

A. Yes.

Q. 30. I notice on this map etching which you seem to indicate spurs or ridges between Little Fodder Stack and the Tennessee River. Have you surveyed out those ridges?

A. Yes, most of them. I have surveyed the ridge that runs down to the mouth of Slick Rock Creek. The ridge running down into the bend of the river I have not surveyed. That is simply sketched on.

Q. 31. I have seen some reference in your deposition in the
1653 Hebard-Belding case to a place called "Stiff Knee." Can you locate that point on this map?

A. Yes.

Q. 32. Please do so.

A. I have marked "Stiff Knee" and "Stiff Knee Gap" on the map.

Q. 33. Now then I understand you to say that between "Stiff Knee Gap" and the river you have not actually surveyed those ridges, which seem to run down to the river on this map?

A. I have surveyed the ridge from Little Fodder Stack by way of Stiff Knee and Stiff Knee Gap down to the river at the mouth of Slick Rock Creek, but there is a branch of that ridge that runs off to the big bend of the river that I have never surveyed.

Q. 34. Now I notice on this map above where the State Line crosses the Tennessee River a stream running into the river which is marked "Cheoah River." Did you survey that river, if so, how much?

A. I surveyed that river as much of it as is there platted—something like one mile of it.

Q. 35. Now Mr. Hale you have stated that from the hemlock on the North bank of the river down the river to opposite the mouth of Slick Rock, thence across the river and up Slick Rock Creek to a ridge leading up to near the top of Big Fodder Stack and thence along the Big Fodder Stack Ridge to Junction is the line which you

understand to be contended for by North Carolina in this case? Is that it?

A. That is as I understand it.

Q. 36. Do you know about North Carolina making any claim to the location of the boundary line West of Slick Rock Creek and up in the neighborhood of Little Fodder Stack and Stiff Knee?

A. Yes sir, they so surveyed it, or some one surveyed it, and I was informed while I was on the survey that it was done by a surveyor.

Q. 37. What surveyor?

A. John Ross McClellan.

1654 Mr. MATTHEWS: I object to this answer as hearsay and incompetent.

Q. 38. Is that the same McClellan who is supposed to have erected the rock monuments along the line surveyed by him?

A. I suppose it is.

Q. 39. About when did he do that as you understood it?

A. About 1893 or 1894 as I understand it. May be a little earlier or a little later than 1893.

Q. 40. In running along that line did you find the rock boundaries which was supposed to be set up by McClellan?

A. Yes. I found rocks set up at the end of each mile and marked with letters and figures indicating the distances from different points. I found those monuments and found marks on the trees all the way from the Unicoy Turnpike Road where the line turns South to the Tennessee River below the mouth of Slick Rock Creek by way of Little Fodder Stack, Stiff Knee, Stiff Knee Gap, etc.

Q. 41. And from Stiff Knee Gap down that line of ridges which leaves the Tennessee River just below the mouth of Slick Rock?

A. Yes.

Q. 42. Now I see in the deposition of Mr. Muller given in the Hefard-Belding case, and I think it is also in your own deposition, but just at this moment I am unable to find it, a reference to a rock marked "N. C.-39-62-283 poles from the river." Is that one of the mile stones erected by McClellan on that survey?

A. Yes, I suppose it is one of the stones found and noted by us on that survey.

Mr. MATTHEWS: Let it be understood that I object to all this testimony as to McClellan as hearsay and incompetent.

Gen. CATES: Yes sir.

Q. 43. Now Mr. Hale, if you can locate on this map about where you and Milligan found that rock marked as described in the last question, please do so and indicate it appropriately?

1655 A. I have done so, indicating as follows: "Stone N. C. 39-62".

Q. 44. How large is that stone Mr. Hale?

A. I don't remember now, probably stands a foot above ground, may be a foot square, 10 inches to a foot square, an irregular stone as I remember it.

Q. 45. Now where does McClellan's line of stones begin?

A. At the Unicoy Turnpike Road at the point where the State Line turns due South to the Georgia Line.

Q. 46. Now how is the first stone marked?

A. I don't remember without reference to my notes. I can get my notes and give it.

Q. 47. Well I will go about it differently. What do you understand the figures "39-62" on this stone up here 283 poles Southwest of the Tennessee River to mean?

Mr. MATTHEWS: I object to that.

A. It means that it is 39 miles from the Unicoy Turnpike Road, and 62 miles from the Cataloochee Turnpike Road.

Q. 48. Can you by a reference to your notes point out the location of another stone between that one which is marked "39-62" and Stiff Knee Gap or Stiff Knee?

A. I think so. Want it marked on the map?

Q. 49. Yes sir.

A. I do so at a point designated "Stone N. C. 38-63", being one mile nearly West of the stone marked "N. C. 39-62".

Q. 50. What are the figures 38 and 63 on that stone supposed to indicate?

A. 38 miles from the Unicoy Turnpike Road and 63 miles from the Cataloochee Turnpike Road.

Mr. MATTHEWS: We object to this the same as we did before as incompetent and irrelevant—the explanation of a writing.

Q. 51. Now if you found any stones along that line by
1656 way of Stiff Knee, Little Fodder Stack, marked "36-65" and "34-67", please indicate their location on this map, Exhibit No. 1 to your deposition?

A. I do so.

Q. 52. The stone marked "N. C. 36-65" seems to be on Stiff Knee Mountain. Is that correct?

A. Yes, near the top of Stiff Knee Knob.

Q. 53. The stone marked "N. C. 34-67" seems to be in a depression or gap along the ridge from Little Fodder Stack to Big Fodder Stack. Is that correct?

A. Yes, it is in a gap; only approximately located on this map.

Q. 54. Now if you can locate approximately the stones which were marked "N. C. 33-68" and "N. C. 32-69"—please do so.

A. I have so located them and marked them with an inverted N.

Q. 55. How were these letters and figures cut into the rock?

A. They were cut in with some instrument.

Q. 56. They were not merely marked upon the rock but cut in?

A. No, they were cut into the rock.

Q. 57. Now what was the sum of these several figures upon these different rocks supposed to indicate—to illustrate: 39-62 and 32-69?

A. The sum of the two numbers is 101, supposed to mean 101 miles between the Cataloochee Turnpike and the Unaka Turnpike, as shown by the commissioners' report.

Q. 58. You mean the distance of 101 miles called for in the report of the commissioners of 1821?

A. Yes.

Q. 59. Now I believe you said that you found the trees marked along that route. How were they marked?

A. The side line trees were marked with three heavy chops; the fore and aft trees were marked with two hacks or chops above a *place*.

Q. 60. Mr. Hale, have you examined a copy of the map filed in this cause by Mr. D. B. Burns, expert witness for the State of North Carolina?

A. Yes I think I have. He has filed a couple of maps, hasn't he?

1657 Q. 61. I don't know.

A. I don't know which map you mean.

Q. 62. I am referring to the map filed in this cause not in the Belding-Hebard case?

A. Yes I examined that map.

Q. 63. I am referring to a copy of his map which is filed as complainant's exhibit "D" in this case, the copy having been exhibited with his testimony during his cross-examination here?

A. Yes, I have examined that map.

Q. 64. He has designated on that map a number of trees by number, and I call your attention to the one marked "Tree No. 30" on the North side of the river and between the hemlock and the mouth of Slick Rock Creek, and I will ask you if you have been at that tree, which is referred to by Mr. Gannett in his testimony and also by Mr. Burns in his deposition?

A. Yes, I have been to that tree.

Q. 65. When did you go there?

A. 8th or 9th day of September, 1910.

Q. 66. With whom?

A. John L. Williams and C. B. McNabb.

Q. 67. Now that was after Mr. Gannett had testified to that tree as in his opinion bearing State Line marks, was it?

A. Yes.

Q. 68. State whether you made an examination of that tree?

A. Yes, examined that tree.

Q. 69. Now tell in your own way what you found on it, and what you did?

A. I found on the West side of the tree two hacks above a blaze, very distinct, and on the East side of the tree some other marks Taking the two hacks above the blaze on the West side of the tree, those on the East side of the tree could very readily be seen as two hacks above a blaze. We blocked the East side of that tree cutting a short block and taking out the blaze found that blaze to be 57 or 58 years old. That is all the marks that we found on the East

1658 side of the tree and we did not block the West side of the tree not wishing to destroy the full mark.

Q. 70. How did you determine that it was 57 or 58 years old

A. By counting the annual growth rings in the wood between the blaze and the bark.

Q. 71. Have you that block here?

A. Yes.

Q. 72. Please produce and file is as Exhibit No. 2 to your deposition?

A. I so file it.

Q. 73. Now you said that you found no other marks than those which you say according to the annual rings of 57 or 58 years old. Please state whether you cut further into the tree to ascertain whether there were older marks further in the tree and, if so, how far did you cut into the tree?

A. Yes, we cut into the tree, cutting the two notches, one above and one below the block to be taken out, counting the rings or growth to be certain that we had got the sufficient depth to get the State Line mark if made in 1821 and blocked that out at that depth but failed to find any mark at that depth.

Q. 74. I will ask you to state whether or not you were blocking that tree for the purpose of ascertaining whether those marks were made in 1821?

A. That was our object in blocking the tree was to determine if the marks when made were made in 1821.

Q. 75. Now you have stated that the marks on the lower or West side of the tree were plainer than they were on the upper or East side of the tree. Please state why that was if you have an opinion?

A. The bark was better preserved on the West side of the tree being more sheltered from the rains and exposure.

Q. 76. Now you have stated that you took out a short block showing only the blaze. Please state why you didn't take out a block showing both the hacks and the blaze?

A. We were all right handed men—none of us could chop left handed, and to have cut the block out of the East side of the
1659 tree we had to stand on the lower side of the tree next to the river and to get the block long enough to show both the hacks and the blaze we would have to cut off higher than we could easily reach to chop on the upper side. Had we had a man that was left handed he could have stood on the upper side of the tree so as to have shown both hacks and the blaze.

Q. 77. So that in cutting the upper part of that block you cut through the two hacks, as I understand it?

A. They were cut out in the chips, the bark there, that is the bark part was cut out in the chips. The hacks if they went to the wood—it was uncertain about the hacks going to the wood and showing into the wood. If they did go to the wood they are probably still in the tree. The upper part of the notch at the upper end of the block would slant downward and while it would cut out the marks *out* in the bark it might leave the marks in the wood that were some four or five inches in the wood.

Q. 78. Now which is the upper part of this block that you filed as Exhibit No. 2 to your deposition—the square or the sloping end?

A. The square end is the upper part of the block. The lower end of the block has the letters on it "Cut September 8, 1910."

Q. 79. Now that was cut from the tree which Gannett and Burns described in their depositions as being Tree No. 30?

A. That tree filled the description given by them so closely and there was no tree along there that did fill that description and therefore we judged that to be the tree that Gannett had described.

Q. 80. What sort of tree was it?

A. Chestnut oak, about 28 to 30 inches in diameter, leaning toward the river.

Q. 81. Is this smaller piece a part of the block?

A. Yes, the smaller piece of wood is the part of the block that remained in the tree at the time the marks were made 57 or 58 years ago. The larger piece shows the wood that has grown on to that since the marks were made.

1660 Q. 82. It would seem that this larger piece didn't knit on to this part of the tree represented by the smaller piece. Why was that?

A. They never do. When the tree is cut if green at the time and it is cut into the wood, the wood that is cut or bruised dies and it has no life to knit it on.

Q. 83. Is that the characteristic of a blaze?

A. Yes, as far as the ax follows the wood or as the bark is sprung loose from the wood the surface of that wood dies.

Q. 84. And it knits on below and above the blaze?

A. It don't knit on below or above the blaze, because it springs loose from the wood.

Q. 85. Then it don't knit on below or above the blaze?

A. It grows on around and fills over, but don't knit on to it.

Q. 86. Is that the reason why these two pieces come apart so easily, because they didn't knit together?

A. Because they didn't knit together. That piece of wood, those two pieces of wood, shows wood that was never cut apart between the two and it is split off and shows where it was split off and the part that was cut off never knitted on and there is a dark streak extending the full part of the blaze.

Q. 87. What does that dark streak or discoloration indicate?

A. It indicates the dead wood caused by the making of that blaze.

Q. 88. I want you to smooth off the back part of this smaller piece so that you can write on it "Inside of blaze cut from Burns' tree No. 30 on September 8, 1910."

A. I have done so.

Q. 89. I will ask you to state whether you kept all the block, or whether a part of it was left on the ground and a part taken by McNabb and Williams?

A. Part of the block was left on the ground and a part was taken by McNabb and Williams.

Q. 90. Now Mr. Hale I call your attention to the block 1661 refered to by Mr. Burns in his cross-examination and produced and filed as an exhibit in this case in his re-examination, which said block was testified to as having been taken by him from

the lower or West side of the tree, which he marks No. 30, and which he says in substance shows two hacks and a blaze, the State Line marks—fore and aft marks—about 89 years old, and I will ask you to state whether, in your opinion, that block shows two hacks and a blaze made in the wood some 88 or 89 years ago, or about 1821?

A. I have examined this block and I find very clearly defined in the wood 88 or 89 years old four distinct hacks, but no blaze for that age. I do find a blaze in that wood at 57 or 58 years old at the proper depth for that age, but none at the depth for 88 years old.

Q. 91. Now as I understood Mr. Burns to testify he claimed that on the lower part of this block where there appear to be certain discolorations that this discoloration represents a blaze. If you do not agree with him in that, as you have stated, give your reasons why you say that that is two distinct hacks at the lower end, instead of a blaze?

A. Three inches from the lower end of this block is a distinct hack cut a quarter of an inch about into the wood as the wood was at the time the mark was made. About one inch below that hack there is a small part of the bark that was there when the mark was made. Those four hacks were made when the sap was up in the wood and as the ax passed through the bark into the wood the bark sprung loose from the wood and the wood is discolored just as far as that bark sprung loose from the wood and no further. Between each two if these hacks there is wood that is not discolored, has never been broken loose from the bark or from the wood that should have been outside of it. There is nothing to indicate that there was ever a blaze on that tree made at the time these four hacks were made, because the wood would have been discolored as far as the tree was blazed. The lower hack shows that it is struck into the tree at an angle of 30 degrees from the perpendicular of the tree and that the bark was sprung showing the sap was in flow and if the sap had not been in flow the bark would not have sprung off from the wood. It would not have sprung off as far as the
1662 bark is from the wood. That bark has sprung loose from the wood at the outer edge of this cut about one inch and a half from the hack. Further in it looks — if it had sprung loose further down, but it is not cut smooth as a blaze is cut. A blaze at the age of 57 years shows smooth cutting and clearly shows that it is a blaze and the wood is discolored four or five inches and you can see the stroke of the ax in that blaze.

Q. 92. In what blaze?

A. In the blaze of 57 years of age four inches from the end of the block following the blaze, you can see the stroke of the ax, that is at a very slight perpendicular angle from the tree. Each of the four hacks at the age of 88 years old has the same characteristics, the same cuts, or very nearly the same angle of the ax entering the wood and where they cut between the hacks shows no discoloration and showing that the bark has never been removed between those hacks.

Q. 93. I call your attention to the angle at which the ax or a sharp instrument of some kind entered the tree at the marks supposed to be 89 years old, and ask you to state whether or not that is the ordinary

or usual stroke in making a blaze rather than a cut or hack into the tree?

A. No, that is not the usual stroke. The angle is too straight into the tree for blazing. It is more in the stroke of making a hack or a chop.

Q. 94. About how long are those blazes as they are ordinarily made upon a tree to show a mark. To illustrate: about how long are those blazes on a tree when found under two hacks as being part of a State Line mark?

A. They vary from four to six or seven inches.

Q. 95. Now Mr. Hale how long have you been examining trees and marks on them and blocks taken from them?

A. I have been surveying about 33 or 34 years and I have followed blocking trees to determine the age of marks about ever since I commenced surveying.

Q. 96. About how many trees have you blocked along the State Line showing State Line marks?

1663 A. I couldn't give the number, I will say 30 or 40.

Q. 97. About how many trees have you blocked in all for marks showing either the State Line or surveyors' marks upon other lines. To illustrate, the Ocoee District lines and the Hiawassee District lines and other lines in Blount and Monroe Counties?

A. I think I would be safe in saying one thousand.

Q. 98. Please state Mr. Hale at what age it becomes difficult to tell the age of a mark on a tree from mere outside examination?

A. That depends altogether on the location of the tree, the kind of a tree and its exterior protection from weather. I have seen trees that I knew that the marks were not more than 15 or 20 years old that had all the appearance of being 50 to 60 years old. I have also seen marks on trees that if I hadn't blocked them that I would have been willing to take an oath that they were not more than 15 or 20 years old, and on blocking them I found them 75 to 80 years old.

Q. 99. I will ask you to state whether when you went there and examined that tree testified to by Gannett and Burns, that is tree No. 30 and found the marks on it, there was any way to determine the age of those marks except by cutting into the tree?

A. No sir there was not.

Q. 100. You have been engaged in working at different times on this line between the States, as well as other lines, in that neighborhood for some 14 or 15 years, have you not?

A. Yes. The first work I did on the State Line was done in December 1895, I think.

Q. 101. Now please tell us what you have observed in relation to marks on trees, which some 14 or 15 years ago were clear and distinct?

A. A great many of them are gone, can't be found. Trees that showed marks reasonably plain could very readily be distinguished 14 or 15 years ago a great many of them have shed the marks off entirely and don't show any indication of marks.

Q. 102. Now in your examination in the case of Heland v.

1664 Belding, you referred to a number of marked trees bearing State Line marks which you and Wilson or you alone, I don't

remember now which, found along the Hangover Lead or Ridge between Hangover and the river. Do you know what became of those blocks?

A. No, I don't know.

Q. 103. You filed them as exhibits to your testimony in that case?

A. Yes sir.

Q. 104. And therefore you are unable to produce them now?

A. Yes, I am unable to produce them.

Q. 105. Mr. Hale, what has been your observation in regard to surveyors marking trees for the purpose of designating a line or survey where the tree has already been marked?

A. It is the invariable rule of the surveyor to preserve the old marks. If he marks the same tree he should either mark it below or above or in the same position. Sometimes a green marker will obliterate or destroy the old marks by making the new marks over them, but it is not allowed by any surveyor that I ever had any experience with, if they know it.

Q. 106. Please state whether in your opinion from the cutting into and blocking of that tree on the upper side by you and McNabb and Williams it bore any marks on the upper or East side other than the ones which you cut out showing the marking to have been made some 57 or 58 years ago?

A. Don't think there were any other marks on the East side of the tree. We failed to find any of them.

Q. 107. Do the four hacks represent any sort of marking known to the State Line marking or survey?

A. No.

Q. 108. Do they indicate any sort of surveyors' line marking over there in Blount or Monroe Counties?

A. No sir.

Q. 109. Then if in surveying out an entry for a grant some 57 or 58 years ago, say in 1852 or 1853, a surveyor came along there and found that tree, was there anything on it that would have kept
1665 him from or shown him that he ought not to cut two hacks and a blaze into it?

Mr. MATTHEWS: We object to that on the ground that nobody can tell what would operate on the mind of another surveyor. It is incompetent and irrelevant, and the witness has already testified what was on the tree.

A. I see nothing that would have deterred them from making a land mark on that tree.

Q. 110. You mean if you had been making a survey there for a grant in 1852 or 1853?

A. Yes, if I had been making a survey for a grant 57 or 58 years ago.

Q. 111. Do you know Mr. Hale whether there were any grants issued by the State of Tennessee covering that particular locality in 1852 or 1853?

A. Yes, there was a grant issued to Jesse H. Parsons about 1850 to

1853, don't remember the date, beginning on the North bank of the river. I don't remember the exact place.

Mr. MATTHEWS: We object to that unless the grant is produced.

Q. 112. I read to you from what purports to be a copy of Grant No. 4692, certified to by W. P. Chambers, Register of the Hiawassee District, as having been recorded in the office of that District in Book "C," page 103, the description of the tract of land granted to Jesse H. Parsons on January 16, 1852 and based on an entry dated September 1, 1849, as follows:

"Beginning at a stake on the bank of the river, where the Unicoy Mountain crosses said river, thence with the meanders of said Mountain or State Line, between North Carolina and Tennessee, North 20 East 43 chains, North 62 East 18 chains, North 13 West 12 chains, North 5½ East 25 chains, North 40 West 14 chains, North 5½ 26 chains, North 14 West 19 chains, North 61½ West 23 chains, North 2½ West 34 chains, North 36¾ East 21 chains, North 49½ East 24 chains, North 30½ East 24 chains, North 56 East 18 chains, North 72 East 49 chains, North 81 East 12 chains, South 64½
1666 East 8 chains, North 59½ East 16 chains, North 80½ East 14 (ch?), North 38½ East 7 (17), North 65½ East 10 chains, East 12 chains, South 74 East 30 chains, North 60½ East 12 chains, South 82½ East 14 chains, North 49 East 42 chains to a stake corner of this 5,000 acre entry, thence with the same North 32 West 560 chains to a stake, corner of his 2,500 acre entry, thence with the same South 30 West 3,444 chains to a stake on the river bank, thence up said river with the meanders thereof to the beginning corner of said first mentioned tract, with its appurtenances, etc."

Now I will ask you to state Mr. Hale if that describes a tract of land lying here in this corner just North of the Tennessee River and West of the State Line North of the Tennessee River?

Mr. MATTHEWS: Object to that as leading.

Q. 113. Well then I will ask you to state where that land, the description of which I have read to you, lies?

Mr. MATTHEWS: I object to that because the question already suggests the answer as put by this second question. Therefore they are both leading.

A. That land is bounded on the Southeast by the line of Tennessee and North Carolina on the North and *and* Northeast by another grant of Parsons land and on the South by the river.

Gen. CATES: Now this paper that I have read from purporting to be a copy from grant 4692, Mr. Matthews, is a copy of a grant certified to by Mr. Chambers. Now if it is desired I will get another certified copy.

Mr. MATTHEWS: That is all right, we will not object on that ground.

Q 114. Then I will ask you to file this paper as Exhibit No. 3 to your deposition?

A. I so file it.

Q. 115. Are you familiar with the location of the tract of
1667 land described in Exhibit No. 3 to your deposition?

A. Yes.

Q. 116. I will ask you to state whether the last call in said grant as follows: "Thence up said river with the meanders thereof to the beginning corner," would run along about or in the neighborhood of where that tree No. 30 from which you cut the block stands?

A. Yes, it would run by that tree.

Q. 117. I hand you here Mr. Hale a certified copy of Grant No. 8970, to A. M. and T. E. H. McCroskey, covering 5,000 acres, more or less, lying in Monroe County, Tennessee, in the Ocoee District, dated May 14, 1892, and based on an entry dated July 28, 1883, and beginning at the mouth of Slick Rock Creek where it empties into the Tennessee river, thence up said Slick Rock Creek with the line of White and Bearden's land to the point where said White and Bearden's line leaves the creek; thence following the White and Bearden line to where it intersects the North Carolina line; thence to the Tennessee River to the beginning, and ask you to file that certified copy as Exhibit No. 4 to your deposition?

Mr. MATTHEWS: We object to that on the ground that the lands covered by it are in the State of North Carolina and that the grant is from the State of Tennessee.

A. I so mark it and file it.

Q. 118. Are you familiar with the location of the land described in that grant, Exhibit No. 4?

A. Yes.

Q. 119. Where does that land lie?

A. It is bounded on the North by Tennessee River and on the East by the North Carolina line as contended for by Tennessee.

Q. 120. In other words, it covers that land lying between Slick Rock on the West and the boundary line as contended for by Tennessee on the East and Southeast?

A. Yes.

Q. 121. Mr. Hale, I here hand you a copy of Grant No.
1668 41091, duly certified to by W. T. Jones, Register Land Office for East Tennessee—said grant being to Samuel J. Griffitts and John H. Morton, dated January 11, 1886, and purporting to be based on an entry made in the Entry Taker's office in Blount and Monroe Counties, Tennessee, No. 1755, dated the 20th day of September, 1883, and ask you to file that paper as Exhibit No. 5 to your deposition?

A. I so file it.

Q. 122. I will ask you to state whether you are familiar with the tract of land covered by that grant?

A. Yes.

Q. 123. Please state where that land lies?

A. It covers practically the same land as Exhibit No. 4, being the land between Slick Rock Creek and the North Carolina line as contended for by Tennessee and a small portion of land on the North side of the river.

Q. 124. I will ask you to state whether or not the boundary described in that grant to Morton and Griffitts purports to run around with the boundary line between the States as contended for by Tennessee?

A. It does.

January 3rd, 1911 at 5:15 P. M., the further taking of proof was adjourned to the same place at 9:30 A. M., January 4th, 1911.

January 4th, 1911, at 9:30 A. M., the further taking of proof was resumed, pursuant to adjournment.

Present:

(For North Carolina): C. B. Matthews, Esq., Ben Posey, Esq. (Mr. W. R. Hopkins).

1669 (For Tennessee:) Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

W. D. HALE, resuming the stand for further examination, deposed and said:

Direct examination continued by Gen. CATES on behalf of the defendant, State of Tennessee:

Q. 124. Mr. Hale, in what Land District in Tennessee was the Eastern half or more of Monroe County?

A. The Eastern part of Monroe County is in the Ocoee Land District. All this territory in dispute is in the Ocoee District, if it is in Tennessee at all.

Q. 125. Do you remember the date of the Act of the General Assembly under which the lands in the Ocoee District were ordered to be surveyed and sectionized, about 1835 or 1836, I don't remember which?

A. Yes, in about 1835 or 1836.

Q. 126. I will ask you to state whether or not there is a map of that District on file in the office of the Register of the Ocoee District?

A. Supposed to be. I have never examined the original map itself.

Q. 127. That is the proper place for its custody?

A. Yes, and that office is in Cleveland, Tenn.

Q. 128. I here hand you a certified copy from the office of the Register of the Ocoee District of the map or plat of Range 7, East Fractional Township 2 of the Ocoee District, and ask you to file it as Exhibit No. 6 to your deposition?

A. I so file it.

Q. 129. Now Mr. Hale, I will ask you to state whether or not you are familiar with the location of the lands covered by this map of Range 7, East Fractional Township 2 of the Ocoee District?

1670 A. Yes.

Q. 130. Where do they lie?

A. They lie at the head of Tellico River. Most of the land lies

East of the State Ridge and the line as contended for by North Carolina.

Q 131. Now I will ask you to state whether you have plotted on the same or a reduced scale upon this map, Exhibit No. 1 to your deposition, the lands shown by this map, copy of Range 7, East Fractional Township No. 2?

A. I have plotted on a reduced scale on the map, Exhibit No. 1 to this deposition.

Q. 132. Have you actually run out any or all of those lines?

A. I have run the range line on the West of that Fractional Township. The Township line on the North of it and the crest of the ridge around the East farther East than the Ocoee lines extend. I have never run the section lines, only the township and range lines.

Q. 133. And from that you plotted the lines upon this map, Exhibit No. 1 to your deposition?

A. Yes, extending the section lines their proper distances as scaled from these certified copies of the Township map, the Ocoee map.

Q. 136. From this map, Exhibit No. 6, copy of the map of Range 7, East Fractional Township No. 2, as you have laid it down on your map, Exhibit No. 1 to this deposition, it would seem that the surveyors of the Ocoee District did not sectionize that pocket or deep indent in the State Line between the dotted line on your map and Cold Spring Knob?

A. No, it appears that it has not been sectionized.

Q. 137. I will ask you to state, Mr. Hale, whether there are other places along the State Line that the surveyors or commissioners for the Ocoee District did not survey up to the admitted and undisputed State Line?

Mr. Matthews: We object to that as calling for information from the witness that he could only know from hearsay as to what was the undisputed State Line in 1835.

A. I don't now call to memory any point along what is now undisputed State Line that I could say the surveyors failed to survey, all their maps show that they had gone to the State
1671 Line, except that I find many sections along the State Line that are much larger than the sections are shown on the original map.

Q. 138. What about the line down in Polk County?

A. I am not familiar with the section lines along the State Line at that particular point so that I could tell.

Q. 139. Mr. Hale, I call your attention to Exhibit No. 2 to the deposition of Charles Seymour, being printed copies of twenty-two grants, introduced by agreement, being Nos. 5986, 5982, 5605, 5606, 5607, 5981, 5603, 6120, 5604, 5609, 6121, 6122, 6149, 6123, 5980, 5608, 5610, 5966, 6151, 6150, 5969 and 5965, being grants issued by the State of Tennessee to Francis W. Lea, and I will ask you to state whether those grants cover these several sections

here numbered on your map, Exhibit No. 1, lying between the State Ridge and the height of the main ridge or divide along which Tennessee claims the boundary line between the States to run?

A. I have examined those grants and compared them to the map and find that they cover all that part of the sectionized lands as shown within Range 7, including that part that is sectionized between the State Ridge and the divide of waters.

(Here follows map marked Exhibit No. 6 to deposition of W. D. Hale.)

Q. 140. Now I call your attention to this Exhibit No. 6 and upon which in each quarter section appears "F. W. Lea, G. E." What does that mean?

A. It means F. W. Lea, General Enterer.

Q. 141. I here hand you a transcript of the record from the Chancery Court of Monroe County, Tenn., in the case of George Peabody Wetmore and others, against Jack Stiles and others, and read you the general description of the land contained in the first paragraph of the bill, as follows:

"On the waters of Tellico River bounded by the divide between the waters of the Tellico River and on the South and the East the waters of Beaver Dam, Hanging Dog, and Snowbird Creeks, on the North the waters of Citico Creek, and bounded on the West by the Ocoee District Line."

Where does that land lie?

A. That covers the land in this controversy at the head of Tellico River and other Lands lying West and undisputed.

1672 Q. 142. This copy has not yet been certified by the Clerk & Master of Monroe County, Tennessee, but I will ask you to have the same properly certified, and file it as Exhibit 7 to this deposition?

A. I will have it certified and file it as Exhibit No. 7 to my deposition.

Mr. POSEY: The State of North Carolina objects on the ground that except as to the mere location of the ground the record from Monroe County is not competent evidence in this case, as nobody to this cause could be estopped by a judgment or a decree or order from the Chancery Court of Monroe County, Tenn. unless they had been parties thereto.

Q. 143. Now Mr. Hale, I call your attention to a copy of the record in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee in the case of Vernon K. Stevenson, Matilda C. Alloway and husband and others against Tip Lovinggood, Ki Woody, Columbus Hoss and others, and to the description of the lands sued for in the bill in the declaration in that cause, describing lands in Fractional Township 2 and Range 7, East of the basis line in the Ocoee District, and *granted* in the Register's office of said District by Nos. 5603, 5604 and others, as set forth in the declaration, and ask you to state where those lands sued for are located?

A. They are located on the head of Tellico River and cover the sectionized land that is in this contention.

Q. 144. I will ask you to file a certified copy of the record in said cause of Stevenson against Lovinggood and others, as Exhibit No. 8 to your deposition?

A. I will do so as requested.

Mr. POSEY: The state of North Carolina objects to the introduction of the record of a former court as being incompetent, inasmuch as the title to the land in question was never tried by that record or any suit that was filed in that record. That was a judgment by default.

Q. 145. Mr. Hale, examining you yesterday in relation to lines which had been run and marked not only along the ridge
1673 between Big Fodder Stack and Junction but from Big Fodder Stack to Little Fodder Stack and around by way of Stiff Knee to the Tennessee River, I will ask you to state if you ever found any marked trees bearing State Line marks West of Big Fodder Stack or the ridge leading from Big Fodder Stack to Junction?

A. Yes.

Q. 146. Where did you find those trees?

A. I blocked one tree on the Pine Mountain two miles or more West of Big Fodder Stack and down near a fork of Citico Creek within a half mile of the creek that had the two hacks and a blaze with all the characteristics of the two hacks and a blaze on the undisputed part of the State Line.

Q. 147. What age were the marks?

A. I don't remember the date at which I cut it out, but counting the age it corresponded very close to the marks that would have been made in 1821.

Q. 148. How many trees so marked did you find there down in that locality some two miles West of Big Fodder Stack?

A. I only found the one that distance West, but I saw others along the ridge between that and the Big Fodder Stack. I don't remember how many, some two or three that had the outward appearance of having been made about the same time.

Q. 149. Was the place where the tree was found which you found and blocked and showed State Line marks made about 1821, known by any particular name?

A. No.

Q. 150. I have got in my mind in some way that it was Pine Mountain?

A. It was on Pine Mountain, it is a long ridge and a trail leading down it leading from Big Fodder Stack and down into Citico Creek.

Q. 151. What became of that block?

A. I don't remember what was done with that block.

Q. 152. Do you recall whether that was exhibited by you in the Federal Court case?

1674 A. I couldn't say whether it was, or whether it wasn't.

Q. 153. You haven't it now?

A. No, I haven't it now.

Q. 154. You recall who was with you when you found that tree and you blocked it?

A. Yes.

Q. 155. Who?

A. William Debitty. William Debitty took me to the tree.

Q. 156. Now Mr. Hale, I call your attention particularly to that part of the line in dispute around the headwaters of Tellico River, and I will ask you to state briefly your reasons for the opinion given by you that the line follows the divide of the waters around the headwaters of Tellico River?

A. My reason for that is that the commissioners reported with the main ridge from Tennessee River to the main ridge and with

the main ridge to the place where it is called Unaka or Unicoy Mountain, and the water shed would certainly be the main ridge.

Q. 157. I will ask you to state what is the main ridge of the mountain in that locality?

A. The water shed is the main ridge there.

Q. 158. I see on this map, Exhibit No. 1 to your deposition, a large number of figures. To illustrate: the letters and figures "E. L. 4675" at the point on the State Line marked "McDaniel Bald". Now what do these letters and figures signify?

A. Elevation 4,675 feet as taken by barometric readings on the ground.

Q. 159. And the other letters and figures at other places on the map indicate the elevation at the different points stated on the map?

A. Yes.

Q. 160. Who was with you when you took those elevations?

A. John L. Williams and Oscar W. Muller.

Q. 161. I notice at the Tennessee River where the line crosses it the elevation marked is 1,050 feet. Is that correct?

A. That was the barometric reading at that point.

1675 Q. 162. What kind of an instrument did you use?

A. Kueffel & Esser aneroid barometer.

Q. 163. Then coming up the Hangover Ridge toward Hangover from the river, I notice that the next elevation indicated is 1,960 feet. Is that correct?

A. Yes.

Q. 164. Then I note that you have given an elevation of 1,800 feet at Sourwood Gap. Is that correct?

A. Yes.

Q. 165. And 1,750 feet at Slick Rock Gap. Is that correct?

A. That is correct.

Q. 166. And 2,760 feet at Caney Branch Gap. Is that correct?

A. That is correct.

Q. 167. And 3,495 feet at Cold Spring Knob. Is that correct?

A. Yes.

Q. 168. Then in the order now stated—3,075 feet at Fat Cove Gap, 3,475 feet at Fat Cove Knob, and 3,485 feet and 4,175 feet at two points between Fat Cove Knob and Hangover, then 5,100 feet at Hangover. Is that correct?

A. Yes.

Q. 169. Then 5,200 feet at Hao, and 5,300 feet at Stratton Bald.

A. That is correct.

Q. 170. 4,200 feet at Cherry Log Gap on the Big Fodder Stack?

A. That is correct.

Q. 171. 3,750 feet at Glen Gap on Fodder Stack Ridge.

A. That is correct.

Q. 172. I see you have also given the elevation at different places along State Ridge. Were those elevations taken in the same way as you have described?

A. Yes.

Q. 173. I will ask you to state Mr. Hale whether the ridge around

the headwaters of Tellico River, which you have testified to be in your opinion the main ridge of the mountain is a well defined, continued and sustained ridge?

1676 A. Yes. It has some high knobs and deep gaps in it but it is a continuous ridge, dividing the waters of Tellico River from the waters of Snow Bird, Beaver Dam and Hanging Dog and other streams.

Q. 174. I see you have given an elevation of 5,000 feet at the point where Grassy Knob Ridge breaks off from the main ridge. Is that correct?

A. Yes.

Q. 175. Then at the point where Grassy Knob divides into the State Ridge and Rough Ridge, I see you have indicated an elevation of 4,950 feet. Is that correct?

A. Yes.

Q. 176. Then I notice further down the State Ridge toward the Tellico River you have given elevations in the following order: 4,000 feet, 3,825 feet, 3,675 feet, 3,725 feet, 3,450 feet, then 3,400 feet, then 2,975 feet, then down near the Tellico River, or at the river, 2,480 feet. Are those the elevations that you found along that State Ridge?

A. Yes.

Q. 177. Mr. Hale, what is the size of State Ridge compared with the ridge which you have shown and marked "Rough Ridge?"

A. Rough Ridge is the more larger and the more prominent ridge, carries its size better, keeps a higher elevation.

Q. 178. Now what is the size and elevation of State Ridge compared with the main ridge around the head waters of the Tellico River as you have laid it down on this map?

A. From the junction of the State Ridge with the water shed ridge, the State Ridge is the highest and the most portminent ridge for about one mile. Grassy Knob is a higher point than the point at the junction of the two ridges. There is one elevation that is not put in there. From Grassy Knob the ridge drops down fast—the State Ridge drops down fast until one-half a mile of Grassy Knob you would be at about the same elevation as Mitchell Lick. From there the State Ridge continues to drop down fast, while the divide rises from Mitchell Lick, the water shed rises. There

1677 is another gap about one-half a mile from the Mitchell Lick that is a few feet more than the Mitchell Lick. After passing that gap there is several miles before you get down as low as the Mitchell Lick on the water shed, and the lowest point on the water shed is nearly 1,000 feet above the crossing at Tellico River.

Q. 179. Where is the lowest point?

A. It is at Tipton Gap near Horshaw Knob.

Q. 180. Where is the lowest point on the main ridge or the water shed ridge?

A. It is at Tipton Gap near Horshaw Knob, the elevation at the gap being 325 feet.

Q. 181. Now I read from this map elevations at places named on

the main or water shed ridge as follows: Mitchell Lick 4,640 feet, Buffalo Stamps 4,850 feet, Peckerwood Ridge 4,725 feet, Cold Spring Knob 4,300 feet, McDaniel Bald, 4,675 feet, Dead Tree Gap 4,425 feet, Horshaw Gap 4,425 feet, Big Cold Spring 4,450 feet, Bear Pen Knob 4,475 feet, Lovinggood Gap 3,735 feet, Buzzard Roost Gap 3,920 feet, Rocky Knob 4,235 feet, Tipton Gap 3,325 feet, Horshaw Knob 3,600 feet, Tipton Knob 3,650 feet, Jenks Knob 3,850 feet. Are those the correct elevations as given by the barometer?

A. Yes.

Q. 182. Please state whether this ridge, called the "State Ridge" runs down to the Tellico River in the form of a ridge?

A. No, it fails to reach the river by three to four hundred feet. There is a little bottom between the end of the ridge and the river at the point where the State of North Carolina contends that the line crosses the river.

Q. 183. Please state whether or not the Tellico River at that place cuts through the State Ridge, so-called?

A. No.

Q. 184. Please state whether there is any contention of the State Ridge on the west side of the Tellico River at that place?

A. No, there is not.

Q. 185. What is the character of the ground upon the west side of the river—the west and south side of the Tellico River where North Carolina claims the boundary line to run?

1678 A. Leaving the river you go by rather a broad face in a depression. In that face there is a lower point to the right and left. It looks as if you were starting up a hollow. In going up some two or three hundred feet from the river you are rising on rather steep ground, but you are in a hollow after going three or four hundred feet from the river, you come out on a little back bone or spur. Follow that up two or three hundred feet and that spur disappears and you are on a broad face of the Jenks Ridge.

Q. 186. I will ask you to state whether between the Tellico River and Jenks Ridge where North Carolina claims the line runs up, on Jenks Ridge, there isn't another stream?

A. Yes, there is a little drain or branch. You cross that following the line as claimed by North Carolina.

Q. 187. Well now at the point where you reach Jenks Ridge is the elevation gradual or sudden—up the ridge I mean?

A. Going up the ridge you climb up on the side and it is pretty steep and when you get up on the ridge it slopes down very gradual and there is a wagon road on the top of it, but Jenks Ridge points down to the river something like a half a mile from where North Carolina contends that the line crosses the river.

Q. 188. So that South and West of Tellico River there is no ridge opposite the end of this ridge and which is now called "State Ridge?"

A. No, there is no ridge there. There is a little spur of the Jenks Ridge, but looking across from the point of the State Ridge

you can't tell that there is any spur there, it looks more like there is a hollow there.

Q. 189. Mr. Hale, you have run that ridge called "State Ridge?"

A. Yes.

Q. 190. And you have been along that line on the South side of the river where North Carolina claims the boundary line to be, haven't you?

A. Yes.

Q. 191. Surveyed it?

A. Yes.

1679 Q. 192. Have you been at that tree which is referred to in the evidence taken on the part of North Carolina as a "holly" bearing some kind of marks, which have been translated to be 86 M.?

A. Yes, I have been to that.

Q. 193. What sort of a tree is that?

A. That is a holly tree, some 16 to 18 inches in diameter. The West side of the tree when I was first there in 1896 was dead and the bark off. The North side of the tree had some cuttings on it or marks that would represent the left hand leg, the inner point and two inner legs of the letter M. The right hand leg of the M was gone. Had a figure under the M, a figure 8, and a part of what would be called the figure 6, but the bulge at the right hand side of the figure 6 was gone. The curve of the lower part of the letter M with the bark, that was gone.

Q. 194. So that a complete M was not on the tree?

A. A complete M or a complete 6 was not on the tree.

Q. 195. That which was left on the tree more readily represented a letter N than a M?

Mr. MATTHEWS: The State of North Carolina objects to counsel for Tennessee stating what is represented.

Q. 196. What did it then represent?

A. I more readily construed it into a M than an N.

Q. 197. —.

A. Because the bark being gone would indicate clearly to me that if it was intended for a letter at all that it was intended for a M, and that the right hand leg had been carried away by that bark.

Q. 198. You say if it was intended for a letter. Could you say it was intended for a letter?

A. I believe it was.

Q. 199. What about the 6?

A. I believe it was intended for a 6, but you had to supply a part of the figure.

Q. 200. How long or how high or long either were those letters?

A. From 6 to 8 inches.

1680 Q. 201. Did you say how large that holly tree was?

A. Speaking from memory it was from 16 to 18 inches in diameter.

Q. 202. Was it sound?

A. No. One side of the tree was dead and it was beginning to decay. A holly is wood that decays fast and if there is any wood there now as was last Winter I could pick it out with my fingers.

Q. 203. It was a hollow tree then?

A. You might say it was a hollow tree. It can't say that that dead wood is there now, if it has not fallen out it is ready to fall out.

Q. 204. Did it bear any other marks?

A. I don't remember that it did.

Q. 205. Now what is your best judgment in regard to the age of those marks?

A. I couldn't form an opinion as to that. They were several years old when I first saw it, but the bark on a holly or a beech takes a peculiar growth that it is hard to detect or determine the age from outside appearance.

Q. 206. What is the character of the place where that holly tree was found?

A. It is on that back bone or spur that I have described, some 30 or 40 feet to the left as you would go up the hollow is this little branch coming down that I spoke of the North Carolina contention crossing. On top it slopes off gradually and there is a wagon road on it and it is very nearly flat.

Q. 207. Good place for a camp?

A. No, I don't think so. A short distance above there would be a reasonably good place for a camp. Right at that point was a poor place for a camp.

Q. 208. Again as to the marks on that tree, can you express an opinion one way or the other as to the probable age of those marks which you have described on that holly tree?

A. No, I can't. There is ground for a difference of 40 or 50 years. The marks on that tree might express 40 or 50 years of age in difference.

Q. 209. Then in your opinion you can't come within 40 or 50 years of the age of the marks on that tree?

1681 A. No sir.

Q. 210. They may be 40 years old, or they may be 80 years old. Is that it?

A. They may be 100 years old.

Q. 211. Why do you say that?

A. Because slick bark trees, such as a holly and a beech take a peculiar growth in the bark. When the bark is cut or bruised it takes a peculiar growth that ain't shown in rough bark trees and when that mark is once healed over you have to determine by the shape of the scar and not by any actual cut in the bark as to whether it has been cut or bruised and it would show as much age at the end of 10 years, except in the size of the scar, as it would show in 40 years or 50 years. The size of the scar would get larger as time would come on, but you wouldn't know how large the scar had been originally and how much the growth of the bark had been.

Q. 212. In other words, produced by time the cutting of the bark would spread?

A. But the slick bark would show as much age when once healed over and a little weather beaten as it would ever show.

Q. 213. With what sort of instrument would you say that those figures or that marking was made?

A. I would say it was done by an edged tool of some kind.

Q. 214. Not by burning?

A. It might have been burnt in. In that kind of a bark it would show the same age from an edged tool as from a burning.

Q. 215. Now Mr. Hale I will ask you to state whether or not you examined along that line from the Tellico River Southward by the holly and thence along Jenks Ridge to its junction with the main ridge for marked trees?

A. Yes, I have looked very close.

Q. 216. Did you find any bearing State Line marks?

A. No, from the holly to the Jenks Ridge I never found any.

Q. 217. Did you find any marks along there and mile stones that were supposed to have been made and set up by McClellan about 1893?

A. Yes, I found those. I said from the holly to Jenks Ridge. When I was first at the holly there was a hemlock tree stood within 15 or 20 feet of the holly that had some hacks on it.

1682 Q. 218. What kind of hacks?

A. I think there was three hacks, may be two, but the next time I was there that tree had been cut down by some person and when I went to examine that tree it had been cut down and I could not make any examination, so I couldn't state the character of those marks.

Q. 219. I will ask you to state Mr. Hale whether there is any difficulty about a man standing down there on the Tellico River or on the State Ridge somewhat North of the river and seeing that the water shed ridge is much higher than the State Ridge or that country down there?

A. I don't believe you can stand at the river and see the water shed ridge, but you know it is higher or the water would not shed there, but when you are upon the State Ridge or the Jenks Ridge at an elevation that would allow you to see over the foot hills and spurs you could very readily see that the water shed is the higher and more prominent ridge.

Q. 220. I will ask you to state whether this stream which you have marked on this map, Exhibit No. 1 to your deposition, as the "main fork Tellico River" is the East fork, the South fork or the West fork?

A. It is the South fork.

Q. 221. I here show you a copy of Chapter 196 of the Acts of the General Assembly of the State of Tennessee for 1841 entitled:

"An act to establish the county of Jones in honor of His Excellency, the Hon. James C. Jones the present Governor of the State of Tennessee."

And after reading to you the first section of said Act, I call your attention particularly to that portion thereof as follows:

"Thence along the Unicoy Turnpike Road three miles to where the State Road crosses the ridge that divides the waters between Cane Creek and Tellico River; thence up the main South branch of said river to the head, a distance of twenty-one miles to the North Carolina line".

1683 Now I will ask you to state whether there is down there in that part of Monroe County a creek which runs into the Tellico River, called "Cane Creek"?

A. Yes.

Q. 222. I will ask you if that creek, called "Cane Creek", running into the Tellico River is located approximately as shown on the Murphy Sheet of the United States Geological map which is filed as Exhibit "Z" to the deposition of D. B. Burns?

A. Yes, that is approximately correct.

Q. 223. And that is altogether a different Cane Creek from the one over in North Carolina which runs into the Hiawassee River?

A. Yes.

Q. 224. Now returning to the quotation above set out from Section 1 of Chapter 196 of the Acts of 1844, I will ask you to state if you know about where or approximately where the call "thence along the Unicoy Turnpike Road three miles to where State Road crosses the ridge that divides the waters between Cane Creek and Tellico River" would run?

A. Yes, I know approximately.

Q. 225. You know where the ridge is that divides the waters between Cane Creek and Tellico River?

A. Yes, I know it on the ground. I have been there.

Q. 226. Now then I will ask you to state about how far would it be from that ridge up the main South fork of the Tellico River to its head and the top of the dividing ridge between the waters of Tellico on the West and the waters which run down into North Carolina on the East?

A. To follow the stream it would be some 22 or 23 miles to its head. To follow the ridges—I mean the roads through there it wouldn't be so far. To follow the stream it would be 22 or 23 miles to the head of it.

Q. 227. About how far would it be on a line following the roads from that ridge to the North Carolina line as contended for by Tennessee?

A. About 18 or 19 miles.

Q. 228. How far would it be from that ridge dividing the waters of Cane Creek and Tellico River to State Ridge, so-called?

A. From the top of that road to State Ridge by the nearest
1684 road is about 15 miles.

Gen. CATES: Defendant, State of Tennessee, here gives notice that she will introduce on the hearing of this case a copy of Chapter 196 of the Acts of the General Assembly of Tennessee for the year 1844, and asks that the same be made Exhibit No. 9 to the deposition of W. D. Hale.

Mr. Posey: State of North Carolina objects to the introduction of this statute and to the testimony of the witness in regard to it. The same is immaterial and irrelevant to this controversy.

Q. 229. Mr. Hale, how wide is the Tellico River at the point where it is claimed by North Carolina the boundary line crosses it?

A. 66 feet.

Q. 230. Is that an estimate or an actual measurement?

A. A measurement. Each bank of the river was noted in my measurement and found there was two pole chains between the banks.

Q. 231. How deep is the water at that place?

A. It depends on the weather.

Q. 232. In its ordinary and usual stage?

A. At low stage if the water was all thrown into one channel it would be 8 feet wide and one foot deep probably. Of course owing to the current. With the fall it has there I think it would pass through a channel at low stage 8 foot wide and one foot deep.

Q. 233. Are you talking now of its lowest stage?

A. I am speaking of its lowest stage that I have ever seen it and I have seen it at very dry times.

Q. 234. Have you seen it in its ordinary stage?

A. I have seen it when it was up and when it took a long tree to make a foot log on it. I would think at medium stage it
1685 would take a channel 25 feet wide and a foot to a foot and a half deep to carry the water with the current that it has there. Pretty swift there. The bed of it is filled with rocks of different sizes and at low stage you can cross by stepping from rock to rock, some long steps in it.

Q. 235. Have you seen that bed full?

A. No, I have never seen it full. I have seen it though when the water was four feet deep in it running at the rate of 10 miles an hour and covering all the bottom of that bed, 66 feet wide.

Q. 236. When did you see it so?

A. I don't remember the dates. I have been there so many different times and in all kinds of weather that I couldn't remember the time that I saw it at that stage.

Q. 237. How far is it from there up to the headwaters of that fork of Tellico River?

A. Following the stream it must be five or six miles. There are a good many streams up there, a good many tributaries to that stream. That is a good big territory of ground that it drains.

Q. 238. Well at the time you have described it as being very low, state whether or not that was an exceptional season of drought?

A. That was a very dry time, in the Fall of the year, all waters every where were very low. I would say that was about as low a stage as it ever gets there.

Q. 239. Now I call your attention to this map of 1821—the original as produced here by Mr. Quarles, State Archivist, and I point out to you the stream marked "Caney Creek" on that map which runs into the Hiawassee River at the point where the line crosses it. Do you know that creek?

A. Yes.

Q. 240. State whether or not it is as large a stream or as small a stream as Tellico River at the point where the line crosses it as contended for by North Carolina?

A. Caney Creek is probably one-third as large as Tellico River where the line crosses as contended for by North Carolina.

Q. 241. On this map of 1821 between the Hiawassee River
1686 and the Southern extremity of the line at Georgia appears another stream marked "Creek". Do you know what that is?

A. I think that is Turtletown Creek.

Q. 242. How does it compare with the Tellico River at the point crossed by the line as claimed by North Carolina?

A. I don't know that creek where the State Line crosses it, but I do know it some miles further down the creek and it is not as large as Tellico River at the point where it is claimed the State Line crosses it.

Q. 243. Are you familiar with the size of "Sitaco" Creek? The creek by that name shown on this map of 1821?

A. Yes.

Q. 244. Are you familiar with Abrams Creek, as shown on this map?

A. Yes.

Q. 245. Do you know Tellassee Creek as shown on that map?

A. Yes.

Q. 246. How do these streams compare with Tellico River at the point where the line crosses it as claimed by North Carolina?

A. Tellassee Creek is many times smaller than Tellico River at that point. Citico and Abrams creeks are both smaller, but not many times smaller. Citico at its mouth may be nearly as large or about as large as Tellico where the line crosses. Abrams Creek is not as large.

Q. 247. Well now I believe you have stated that you have surveyed somewhat up Cheoah River from its mouth?

A. Yes.

Q. 248. About how far up?

A. About a mile.

Q. 249. How is that stream compared with Tellico River?

A. Cheoah affords more water, though the channel is smaller, being more confined in the hills.

Q. 250. I will ask you to state Mr. Hale whether this original map of 1821, that is the one here before you produced by Mr. Quarles, has ever been before you during any of your examinations in the Hebard-Belding case?

A. No, I never saw this map until after the Hebard-Beld-
1687 ing case—until after I had testified in the Hebard-Belding case.

Q. 251. Only copies of it, or supposed copies of it?

A. I hadn't seen copies of it at that time. In the testimony for the bill of review I had a copy and may be the original before me.

Q. 252. So that you had seen neither the original or had a copy of it before you when your testimony was given in the original case?

A. No.

Q. 253. But you did have a copy of it before you when your testimony was given after the bill of review had been filed in the United States Circuit Court at Knoxville?

A. Yes.

Q. 545. Are you sure that the original was there when you were testifying, Mr. Hale?

A. In giving my testimony at one time Mr. Quarles was present with the original map, but I don't remember at what stage of the game that was.

Q. 255. In your testimony in the Hebard-Belding case given under the bill of review you gave your reasons why you couldn't follow that map in making an actual survey, and I will endeavor not to go over that same ground again, but I want to ask you whether at points on the State Line that are now not in dispute you have found any discrepancies between the call in the commissioners' report and an actual survey on the ground?

A. Yes, at different points I have found inaccuracies by actual survey. One from the 101 mile tree to the Hiawassee River. The measurement is some 26 or 28 poles longer than as given in the calls of the commissioners.

Q. 256. Now is there any dispute about where the stone corner is set up, marked Ten. on the West side and N. C. on the East side and where a hickory tree is also marked on the South side Ten. 101 M and on the North side N. C. 101 M as set out in the report of the commissioners?

A. No, there can be no variation in that more than a few feet.

Q. 157. Is the stone there?

A. No. There is a stone there, but not the original stone.

Q. 258. Is the hickory tree there marked as called for in 1688 the report of the commissioners?

A. No.

Q. 259. Have you ever heard of any dispute about where that point is?

A. No.

Q. 260. Now then the next call in the commissioners' report is as follows: "From thence a due course South two miles and two hundred and fifty-two poles to a spruce pine on the North bank of the Hiawassee River below the mouth of Cane Creek." Have you surveyed out that line?

A. Yes.

Q. 261. Please give the actual distance as that line surveys out?

A. 2 miles and 280 poles.

Q. 262. That is the line that you referred to in an answer one or two back?

A. Yes.

Q. 263. When you said that there was a difference of some 26 or 28 poles between the call of the commissioners' report and the actual survey?

A. Yes, I had forgotten the exact distance as given by the commissioners, but I had my exact distance and it was two miles and two hundred and eighty poles by careful measurement.

Q. 264. Have you run that next call of the commissioners' report: "Thence up the said river the same course, about one mile, and crossing the same to a maple marked W. D. and R. A. on the South bank of the river"?

A. No, I never run that.

Q. 265. Then you never run the line South of the Hiawassee River?

A. No.

Q. 266. I will ask you to state, Mr. Hale, whether this map of 1821, produced here by Mr. Quarles, shows the boundary line between the States as running across or around the headwaters of the Tellico River?

A. That map shows the line following the crest of a continuous ridge around the headwaters of Tellico River.

Q. 267. I will ask you to state whether on the Tennessee side of the line at that point the ridges as indicated on this map run parallel with the main ridge or rather perpendicular to it?

1689 A. They are running nearer perpendicular to it as indicated on that map?

Q. 268. Would the boundary line at that point around the headwaters of Tellico River conform to the actual topography on the ground of the line as Tennessee claims it, or whether it would conform to the actual location of what is now called State Ridge?

A. Removing the etching from that map and taking the line only it would conform to neither, but with the etching showing that the line should be on the crest of a ridge it would nearer conform to the contention of Tennessee.

Q. 269. Please state whether the ridges near the State Ridge run perpendicular to it or more parallel with it?

A. The ridges near the State Ridge run parallel. The Rough Ridge on the West of the State Ridge is nearly a parallel ridge with the State Ridge.

Q. 270. Mr. Hale, do you know where the Unicoy or Unaka Mountain is?

A. I know what is locally known as Unaka Mountain.

Q. 271. Is it so designated on your map?

A. No.

Q. 272. Please designate that place on your map, which is known as Unaka Mountain, that is called for in the report of the commissioners of 1821?

A. I have done so.

Q. 273. Is that the point at the end of this call found in the commissioners' report of 1821: "From Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain?"

A. Yes.

Q. 274. I will ask you to state whether the mountain then South of that point to the Hiawassee River is called the Unaka or Unicoy Mountain?

A. Yes.

Q. 275. Now Mr. Hale I call your attention to the Cession Act by

North Carolina to the United States in 1789 and also to the calls for the line between the States of North Carolina and Tennessee as set out in the Constitution and Code of Tennessee, to the report of the Commissioners in 1821, and to the Act of the General Assembly of Tennessee, known as Chapter 35 of the Acts of 1821, approving the report of the commissioners, and I will ask you to state how you would run that line and where you would find its location to be according to the calls of those several documents beginning at a point on the Hiawassee River where the line crosses that river at the mouth of Caney Creek and running back to the Little Tennessee River?

1690

A. I would have to follow the crest of the ridge, the water shed.

Q. 276. Well, would you reach this point here, called "Jenks' Knob?"

A. Yes.

Q. 277. There is no dispute of the location of the line between Jenks' Knob and the Hiawassee River?

A. No sir.

Q. 278. Then going back over the line from Jenks' Knob, how would you go?

A. By way of Horshaw, Tipton Gap, Rocky Gap, McDaniel Bald, Cold Spring Gap, Peckerwood Ridge, Buffalo Stamps, Mitchell Lick to the junction of the water shed with the State Ridge, thence to Laurel Top on the undisputed line.

Q. 279. Thence from Laurel Top where?

A. From Laurel Top the Haw Knob, Stratton Grave, Big Cove Gap, Lick Log Gap, Stratton Bald, Hao, Hangover, Fat Cove Knob, Cold Spring Knob, Slick Rock Gap, Sourwood Gap and to the river opposite the hemlock that is marked on the North bank of the river.

Q. 280. Now sometimes you have referred to that ridge which you have described as the "Water Shed Ridge." Please state whether, in your opinion, that is the main ridge of the mountain between the points that you have designated in your last answer?

A. That is the main ridge.

Mr. MATTHEWS: State of North Carolina objects. The witness can state what kind of a place it is and the court will be the judge of whether it is a ridge or not.

Q. 281. Did you state that was the main ridge?

A. Yes, it keeps a continuous elevation and it is an un-
1691 broken ridge, except that it has some low knobs and deep gaps and there is no water courses on it.

Q. 282. Please state whether that line that you have described running around from Jenks' Knob to the Little Tennessee River would comply with this call in the commissioners' report—reversing the call—"From Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain?"

A. Most certainly it would comply with that, and it is the only route that can be followed and comply with it.

Q. 283. You mean comply with that call?
A. Yes.

January 4th, 1911, the further taking of proof was adjourned at 12:15 P. M. to 2 o'clock P. M.

January 4th, 1911, at 2 o'clock P. M. the further taking of proof was resumed, pursuant to adjournment.

Present (for North Carolina): C. B. Matthews, Esq.; Ben Posey, Esq.; (Mr. W. R. Hopkins).
(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

W. D. HALE, resuming the stand for further examination, deposed and said:

1691½ Direct examination continued by Gen. CATES, on behalf of the Defendant, State of Tennessee:

Q. 284. Mr. Hale, describe briefly what the etching along this boundary line as laid down on the map of 1821 shows to a surveyor?
A. It shows that the line followed the crest of the ridge where there is etching with the green shade next to the line.
Q. 285. From the beginning all through the line on this map of 1821 there appears at distances somewhat irregular little circles. Do you know what they mean?
A. They represent the ends of the miles.
Q. 286. Count from the beginning point to where 15 appears on the map and see how many circles there are?
A. 15. There are 16 circles, but there is one to begin on. That is not counted.
Q. 287. Now count on from where 25 appears?
A. 25 of those circles to 25.
Q. 288. Now please state whether after the 25th mile circle any other circle along that line is numbered?
A. Don't see any number for any other.
Q. 289. Mr. Hale, state whether or not in the early days, what is now known as "Little Tennessee River," was called "Tennessee River?"
A. I find it so marked on old maps "Tennessee River."
Q. 290. Now I call your attention to that point on the map where the line crosses the Tennessee River and also where some kind of a stream marked "Creek" flows into the Tennessee River, and I will ask you to state whether it appears on this map that the line crosses the Tennessee River at the mouth of that stream marked "Creek", or below it?
A. By the scale of that map it appears to cross from 60 poles below the junction of the two streams—the river and the creek.
Q. 291. How many feet in 60 poles—how many feet in a pole?
A. 990 feet in 60 poles.

Q. 292. Now I will ask you to examine this map and state
1692 what appears just South of the river and West of this line as it is laid down on this map of 1821?

A. There seems to be a ridge there, a point of the mountain running down to near the river.

Q. 293. Do you mean those hachures or that etching just South of the river and West of the line indicates a ridge at that place?

A. Yes, it indicates that the crest of the ridge is West of the line for a distance of a mile and a half from the river. At the second mile circle South of the river the line appears to be on the crest of a ridge. From the first to the second. I should have said the third, I guess. There is one appears to be in the river, or about the bank of the river. The second mile circle appears to be on the West bank or near the West bank of that stream. The third mile circle is on the crest of a ridge, and the line from the second to the third mile circle appears to be on the side of the ridge approaching the crest.

Q. 294. When you used the term second and third was it because there appears to be one mile circle on the South bank of the Tennessee River?

A. Yes.

Q. 295. And that you call the first and then the next one the second?

A. Yes, and the one on the crest of the ridge the third.

Q. 296. Then at a distance of two miles, according to the scale of this map, the line appears to be on the crest of a ridge or mountain?

A. Yes.

Q. 297. I will ask you to state Mr. Hale whether you have been on the territory between the junction of Chcoah River and the Tennessee River on the ground there?

A. In the point between the two streams?

Q. 298. Yes.

A. No, I have not been on there.

Q. 299. Have you been where you could observe the character of the country?

A. Yes.

Q. 300. In the junction between these two streams?

A. Yes.

1693 Q. 301. Examine this map of 1821, and state what appears to be between the junction of the Tennessee River and this stream marked a "Creek?"

A. It has very much the appearance of having been sketched from a bird's eye view of that territory between Cheoah River and Tennessee River. Such bird's eye view can be had from the view on which Tennessee claims the State line to run.

Q. 302. What does that etching between the Tennessee River and the stream marked a "Creek" indicate?

A. It indicates a ridge running nearly parallel with the river.

Q. 303. I will ask you to state whether there is any such ridge between Cheoah River and the Tennessee River?

A. Yes, there is such a ridge.

Q. 304. A ridge which would substantially conform to the etching in between the river and this stream marked a "Creek?"

A. I don't know whether it would substantially conform, but it would conform to the etching of a man that got a bird's eye view of that territory.

Q. 305. Now in the examination of Mr. Gannett or Mr. Burns, or both of them.—Mr. Gannett as I remember it—some criticism was made of a map which was exhibited with your testimony in the Hebard-Belding case, to the effect that it showed Hangover to be only about 2,500 feet above sea level, when in fact it is in the neighborhood of 5,000 feet. I will call your attention to that map and ask you to state whether that map was drawn for the purpose of showing the exact location of either the Hangover Ridge or the Big Fodder Stack Ridge?

A. No, the intention of that map was to show the relative height of one ridge to the other, not the elevation above sea level or above the river or any point, except of one ridge as compared to the other.

Q. 306. Now what do each line of etching or hachures on the map represent?

A. 100 feet, counted from the crest of the ridge, not from the base or the sea level, but counted from the crest of the ridge downward. Plenty of room in there to have put several other hundred feet, but the intention was only to show the distance of one ridge the crest was below the other ridge.

1694 Q. 307. That is, to show that the Big Fodder Stack and the Big Fodder Stack Ridge was considerably lower than the Hangover and the Hangover Ridge?

A. Yes, that was the intention of the map.

Q. 308. And you didn't undertake to put the elevations on that map?

A. No.

Q. 309. A matter has been called to my attention that I nearly omitted Mr. Hale. I will ask you to state whether a man running a line South of the Tennessee River and up the West side of Slick Rock Creek or on both sides of Slick Rock Creek, as North Carolina contends the line to be, he could see this territory between Cheoah River and Tennessee River?

A. No.

Q. 310. What is between Slick Rock Creek and Cheoah River?

A. What we call Slick Rock Ridge, the way the line is contended for by Tennessee. Nor are there any ridges that he can see that would justify any such etching as that. The ridges run nearly at right angles to that etching between Slick Rock and Cheoah and Slick Rock and the River. They were run—they would run it at right angles according to that etching, or nearly so.

Q. 311. But traveling up the Hangover Ridge or Lead from a point opposite the marked hemlock on the North bank of the river, would Cheoah River and the territory between Cheoah River and of the — River be in sight?

A. Yes, there are places that it is in sight most of the way, and the ridges show it to run the general direction of that etching.

Q. 312. I will ask you to state Mr. Hale, in your opinion, what stream of water is represented by this stream marked a "Creek" on this map of 1821 and flowing into the Tennessee River East and South of where the boundary line crosses the river?

A. From the length of that stream as etched and the general trend of the stream and the ridges as represented, I can't think of any stream that it would represent other than Cheoah River.

Q. 313. Does it fit Slick Rock Creek?

A. No. It is too long for Slick Rock Creek. It don't flow in the proper course for Slick Rock Creek. It is not surrounded by
1695 ridges running in the proper direction for Slick Rock Creek.

Q. 314. If at a distance of a mile and a half from the river Slick Rock Creek would bend back Southward and Eastward so as to conform to the course of this stream marked "Creek," I will ask you to state what ridge, if any, it would cross?

A. You would have to take it over the Slick Rock Ridge at a point 2,800 feet above the creek.

Q. 315. Above the creek?

A. Have to run it up hill 2,800 feet.

Q. 316. And about where would it run across the Hangover Ridge?

A. Somewhere not far from Cold Spring Gap. Might take it further to Caney Spring Gap at an elevation of 2,700 feet above the bed of the creek.

Q. 317. You don't mean 2,700 feet above the bed of the creek, do you?

A. Above the bed of the river.

Q. 318. That is supposed to be the elevation above sea level, isn't it?

A. Yes. It would be about 1,700 feet above, instead of 2,700.

Q. 319. You mean about 2,760 feet above sea level and about 1,700 feet above the edge of the river?

A. Yes.

Q. 320. Now I will direct your attention again to the Tellico Country and ask you to state how far West of the boundary line as shown on this map of 1821 are the headwaters of the main or South fork of the Tellico River, according to the scale of that map?

A. About 400 poles—from 400 to 600.

Q. 321. It don't touch the boundary line, according to that map—it don't touch the Tellico waters at any point?

A. The nearest point seems to be about 80 poles.

Q. 322. That is the boundary line is about 80 poles East of the nearest headwaters of Tellico?

A. Of the nearest headwaters of Tellico River.

Q. 323. Now coming back to the point where the line as contended for by North Carolina crosses the Tellico River. I believe that you stated that the measured distance between the banks at that point is 66 feet?

1696 A. Yes.

Q. 324. Now what was it you said about a stream 8 feet wide—did you mean to say that that stream there dwindled as you had seen it until it was no more than 8 feet wide at that point?

A. No.

Q. 325. What did you mean?

A. If I understood your question to which that was an answer you wanted to know the volume of the stream and my answer was that that stream, or my answer was that that stream flowing at the rate of 10 miles an hour would require a channel 8 feet wide and 10 feet deep to carry the water when it was very low.

Q. 326. Now at that time when you saw it when it was at its lowest tide, what depth did the bed carry the water?

A. Following in between the rocks not over two feet, may be not over two feet two inches. There are boulders that divided the stream up into several little streams.

Q. 327. So you never saw it dwindled into a rivulet, when it was not more than 8 feet wide?

A. I never saw it less than 36 feet wide.

Q. 328. That was during the driest drought of the season that you remember?

A. Yes, I don't think I ever saw the streams in that country as low as they were at that time.

Q. 329. On the lower end of this map, Exhibit No. 1 to your deposition, I see the following statement: "Map of a portion of the State Line between North Carolina and Tennessee as surveyed by O. W. Muller and W. D. Hale in 1896, scale 1 inch—160 poles." Now was all that surveying done from which this map was made in 1896?

A. No, not all of it. The main line from about the pike road North of the river following around both sides—all the surveying around Slick Rock and around the head of Tellico River and to the Unaka Turnpike Road was done in 1896. The State Ridge line from the junction of the State Ridge and the divide to the Jenks Knob was run in 1899 by myself and O. W. Muller. From the 59th mile tree to the pike road was run in 1910.

1697 Q. 330. What about Cheoah—the survey that you made of a part of Cheoah River?

A. That was done at a different time, I don't remember the date.

Q. 331. Now when did you do the major portion of this surveying—I mean when you did the major portion of this surveying in 1896 that was long before this report of the commissioners and map of 1821 had been found by Mr. Quarles, wasn't it?

A. Yes.

Q. 332. Now Mr. Hale, taking the topography of the country and the knowledge you have of it; its wildness and unsettled condition when the line was located in 1821 and the report and the map of the commissioners—from your experience as a surveyor where do you as a land surveyor say that the commissioners located the State Line where it is now in dispute in this case?

A. I would say that they located it on the crest of the ridges where Tennessee contends for.

Q. 333. Just describe that?

A. From the Tennessee River to the main ridge at the Hangover, passing by way of Slick Rock Gap, Cold Spring Knob, Fat Cove Knob, thence to the Stratton Bald and to the point marked "Junction," thence to Big Cove Gap, the Meadow Gap, Haw Knob, the

Laurel Top and to the junction down to what is called the State Ridge down to the junction with the divide of the State Ridge, then with the divide by way of Mitchell Lick, Buffalo Stamps, Cold Spring Gap, with McDaniel Bald, Rocky Knob, Tipton Gap to the Jenks Knob and to the Beaver Dam Bald and continue on on the undisputed State Line.

Q. 334. One more question, Mr. Hale. As I understand it, there is no dispute whatever about the location of the line between Laurel Top and the point marked "Junction" where the Fodder Stack Ridge joins itself to what we call the main mountain, is there?

A. No, no dispute about that.

Q. 335. Now please state in your own way whether a surveyor or a party of surveyors unacquainted with the territory, going along that main ridge from Laurel Top Northeastwardly, would know when they reached the point which you have marked "Junc-
1698 tion," that that was the junction point of the Fodder Stack Ridge with the main mountain?

A. No, they wouldn't know.

Q. 336. Why?

A. Because the crest of the main ridge is covered with laurel. Following the crest of the main ridge they couldn't see off any distance—they couldn't see 50 yards from the top of the ridge on either side, and to clear the laurel all off the Fodder Stack Ridge drops down from the main ridge in such a manner that you wouldn't know where the junction of the two ridges were.

Q. 337. How much below the crest of the main ridge is it to the point where the top of the Fodder Stack Ridge or Lead joins itself to the main mountain?

A. There might be a density of opinions on that. The main mountain is making a bend, there is rather a curve and the Fodder Stack Ridge shows up against the side of that curve, not up to the top of the mountain, but against the side of the curve, and I would say you would go 500 feet from the crest of the main ridge before you could recognize from the ground over which you were traveling that you were going off on to another ridge.

Q. 338. You mean 500 feet below the crest of the main ridge?

A. I mean 500 feet from the crest of the main ridge and probably 300 feet lower than the crest of the main ridge.

Q. 339. Please state whether or not you found it easy in traveling along that main ridge with your knowledge of the country with your years of surveying to find the place where Fodder Stack joins on to the main mountain?

A. I have to watch it pretty close to tell where it is.

Q. 340. Would you in coming from Hangover Southwest along the main ridge have the same difficulty?

A. Yes, the path traveled runs outside of that laurel and forks where you would turn to go down the Fodder Stack Ridge and that is the best guide. The fork of the path is a better guide than the crest of the ridge for finding the junction.

1699 Q. 341. Where does that path come from?

A. Well coming from the Big Fodder Stack toward North Carolina it forks at the junction and one fork of it runs Southwest-

ward, and I don't know where it leads to. The other turns North eastward along the crest of the main ridge.

Q. 342. I will ask you to state Mr. Hale whether Exhibit "A" t the answer and cross-bill of the State of Tennessee in this case is substantial copy on a reduced scale of Exhibit "A" to your dep osition in the case of Charles Hebard v. Belding and others in th Circuit Court of the United States at Knoxville?

A. Yes, that is a substantial copy on a reduced scale.

Cross-examination by Mr. POSEY on behalf of the complainant, State of North Carolina:

X Q. 1. Mr. Hale, how long since you have known this land in dispute in the Tellico Country or Tellico boundary?

A. Something near 20 years, 18 to 20 years.

X Q. 2. How did you first go there?

A. I first went there as an agent of Wetmore and Stevenson and others.

X Q. 3. Were they parties claiming that this land lay in Tennessee?

A. Yes sir.

X Q. 4. Have you ever been there to survey or investigate the line otherwise than as an employe of parties claiming that it lay in Tennessee?

A. No.

X Q. 5. In your examination this morning the Attorney General for Tennessee asked you what discrepancies you found in distance in the report filed by the commissioners. I believe you stated that from the Unicoy road to the Hiawassee River you found some 28 to 30 poles discrepancy?

A. Yes, 28 poles.

X Q. 6. But up to the Unicoy road it was within a few feet of accurate?

1700 A. No.

X Q. 7. Didn't you say that?

A. No sir.

X Q. 8. What did you say about that?

A. Didn't say anything about that.

X Q. 9. And didn't he ask you about discrepancies and didn't you say up to the Unicoy road it was within a few feet of being accurate?

A. No sir.

X Q. 10. How much was the difference from the Tennessee River to the Unaka Turnpike Road?

A. I think there was some three or four miles going around the head of the Tellico River. I think the distance was three or four miles too long. I don't remember exactly, going around the head of Tellico, and somewhat too short going across by the way of State Ridge.

X Q. 11. Don't you know Mr. Hale by your measurement you find it 101 and 51/100 miles?

A. I don't know.

X Q. 12. Don't you know that it would be 7 miles further around by the contention of Tennessee?

A. 5 miles.

X Q. 13. Have you ever been sworn in this case before?

A. Yes.

X Q. 14. What did you say there?

A. Guess the record would tell.

X Q. 15. How far is it around that loop to go around by the McDaniel Bald back to the Jenks Knob to the County Corners that we have been talking about?

A. 11 and a fraction of a mile, something near 11½ miles.

X Q. 16. How far to go by way of the State Ridge across there?

A. About half the distance, five and something.

X Q. 17. Then I will ask you if you were to run by the calls as referred to in the commissioners' report "crossing Tennessee
1701 River at the distance of sixty-five miles from the beginning, from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhills Towns, near the head of the West fork of Tellico River, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka Mountain to the Southwest end thereof, at the Unicoy or Unaka Turnpike Road, where a corner stone is set up marked Ten. on the West side and N. C. on the east side, and where a hickory tree is also marked on the South side Ten. 101 M. and on the North side N. C. 101 M., being one hundred and one miles from the beginning."

Now then I ask you to run from the Tennessee River to the Unaka Road, according to those calls at 101 miles, which way would you run?

A. I don't know.

X Q. 18. The Attorney General asked you giving you those calls and leaving out the 101 miles, and you said you would run around the crest of this mountain around the route claimed by Tennessee. Now I ask you to put that other line in there 101 miles and ask you where you would run?

A. Leaving out the words "along the extreme height", and confining it alone to the distance I would come near about reaching it by going along the State Ridge. My recollection is it don't reach it at a considerable distance.

X Q. 19. You were sworn in the case of Stevenson v. Fain—you were sworn about this same line?

A. Yes, and the distances that I gave in there are correct and I would swear to them yet. That horse is still 17 hands high.

X Q. 20. See what distance you gave—look at your testimony, and see what distance you gave from the Catalouchee Turnpike to the river and see what distance it was? You say 100 5/10 miles?

A. Yes, 100-5/10 miles from the Catalouchee Turnpike Road That is in answer to a question, but I don't know what the question is yet.

X Q. 21. The question is 129. The Acts of North Carolina a
Tennessee of 1821, describing the line between these two Sta
reads as follows:

1702 "Beginning at a stone set up on the North side of
Catalouchee Turnpike Road, and Marked on the East si
N. C. one thousand eight hundred and twenty-one, and on the W
side Ten. one thousand eight hundred and twenty-one: runni
thence a Southwesterly course to the Bald Rock, on the summit
the Great Iron or Smokey Mountain, and continuing Southwe
wardly on the extreme height thereof to where it strikes Tennes
River, about seven miles above the old Indian town Telassee, cro
ing Porter's Gap at the distance of twenty-two miles from the beg
ning, passing Meig's boundary line at thirty-one and a half mil
the Equinottey path at fifty-three miles, and crossing Tennes
River at the distance of sixty-five miles from the beginning, fr
Tennessee River to the main ridge, and along the extreme heig
of the same to the place where it is called Unacay or Unaka Mou
tain, striking the old trading path leading from the Valley Tow
to the Overhill Towns, near the distance of ninety-three miles fr
the beginning."

Now I will ask you to calculate the distance between the beginni
point claimed above—I mean mentioned above—by adding the d
tance between the beginning point and the Tennessee River bei
65 miles of the actual survey of the line as claimed by these pr
visions, running down the main ridge which is known in that cou
try as the State Ridge to the Tellico River and thence to the Una
Turnpike, and state the distance?

A. The answer is 100-5/10 miles from the Catalouchee Turnpik

X Q. 22. Now do you get that from measurement to the Tennes
River and adding 65 miles to it?

A. Yes.

X Q. 23. Now then according to the same calculation, what is th
distance around this loop that is claimed—around by McDani
Bald—claimed in this Tennessee contention?

A. 106-85/100 miles.

X Q. 24. Now what is the difference?

1703 A. Something like 7 miles difference.

X Q. 25. A little over 7, ain't they?

Mr. HOPKINS: 6-35/100's.

X Q. 26. Yes, you are right, 6-35/100 miles—you will make tha
your answer?

A. Yes.

X Q. 27. It is more than two or three miles discrepancy aroun
that way?

A. Yes, it is more than three miles discrepancy.

X Q. 28. Did you ever go around this contention—the McDanie
Bald contention?

A. Yes.

X Q. 29. Did you ever find any marked trees on that line?

A. No, none that I could swear were marked line trees.

X Q. 30. Don't you know that where it forks off from near Grassy Knob, or the place called County Corners by some, that from this ridge, the State Ridge, don't you know that it forks down there several hundred feet?

A. Yes.

X Q. 31. Before you start to rise again?

A. Yes, it forks down about 360 feet.

X Q. 32. Now then if you—you didn't put any elevation there for Grassy Knob, did you?

A. No sir.

X Q. 33. Why was that?

A. I don't know why that was omitted.

X Q. 34. All those elevations that you are claiming for Tennessee are put down there?

A. Yes.

X Q. 35. Ain't Grassy Knob as high as any of them?

A. Grassy Knob is higher than any of the other elevations around the pocket.

X Q. 36. It is not where you turn off here?

A. No sir.

X Q. 37. Further down the State Ridge towards the Tellico River?

1704 A. Yes.

X Q. 38. You say you can't tell me why Grassy Knob was omitted?

A. It was an oversight, the junction of the two ridges.

X Q. 39. You have got the two ridges at the figure 5?

A. I have got another junction.

X Q. 40. Is it nearly parallel with the State Ridge?

A. Yes, it is nearly parallel with the State Ridge.

X Q. 41. Then I ask you if these knobs, high peaks and low valleys that you speak of when you figure that to be the line don't break off almost at perfect right angles to this main or State Ridge?

A. Yes.

X Q. 42. Don't they run around there this distance of 12 miles and come back at right angles at Jenks Knob?

A. Nearly at right angles at Jenks Knob.

X Q. 43. Is there any map shown here that will indicate that there was ever a survey made by McDaniel Bald?

A. Don't see any.

X Q. 44. That is the point claimed by Tennessee as the divide of the waters and this line?

A. Yes.

X Q. 45. You say you have seen no map filed here that would indicate that this survey went by McDaniel Bald?

A. Only the reference on the map of 1821 showed that they followed the crest of the ridge.

X Q. 46. Now then suppose on this map of 1821 they would add the proper place for the Tellico River they would have a perfect line up the State Ridge, wouldn't they?

A. I can't say that, I don't think they would.

X Q. 47. To follow the divide of the waters you must go here from figure 5 on your map around by Mitchell Lick, Buffalo Stamps, Peckerwood Ridge, Cold Spring Gap, McDaniel Bald, Dead Tree Gap, Horshaw Gap, Bear Pen Gap or Knob, Haw Knob Gap, Rocky Knob, Tipton Gap, Tipton Knob to Jenks Knob? Now you must go around by those places to follow the divide of the waters?

1705 A. Yes.

X Q. 48. You say you never found any marks on that line that you could say were State Line marks?

A. No.

X Q. 49. You say you have seen no map that would indicate that they ever run around by the McDaniel Bald, except something that shows the crest of the ridge?

A. That is all.

X Q. 50. There is no map filed here, Mr. Hale, which pretends to show that deep pocket there?

A. Nothing but the maps which are exhibits in this case.

X Q. 51. And you say there is none of them that would reach the McDaniel Bald, except the mere fact that these hachures indicate the crest of the ridge?

A. I don't know whether there is any geological maps filed here.

X Q. 52. I mean those maps that you have filed here to-day?

A. None of them indicate it more than a survey.

X Q. 53. And you can't reach the Unicoy Road in less than 106-85/100 miles by going around that McDaniel Bald route from the Catalouchee Turnpike?

A. No, assuming that the measurements are correct.

X Q. 54. You can reach it in 101 or 101½ miles by following the State Ridge line?

A. Yes.

X Q. 55. How long have you known the State Ridge?

A. Ever since I have known the territory, about 18 years.

X Q. 56. That is its local name?

A. Yes.

X Q. 57. Is Laurel Top on the State Ridge?

A. At the head of State Ridge.

X Q. 58. It is on undisputed territory?

A. Yes.

X Q. 59. How far is it before you fork down here and

1706 make this descent to get here on those knobs, which you claim is the State Ridge?

A. About one-half mile.

X Q. 60. That is still State Ridge?

A. Yes.

X Q. 61. Grassy Knob is on the State Ridge?

A. Yes.

X Q. 62. It is known as the State Ridge to the Tellico River?

A. Yes, that is the local name to the Tellico River.

X Q. 63. You spoke of the width of the Tellico River over there. When did you measure it?

A. I measured it in 1899, and a party of surveyors measured it again.

X Q. 64. You measured it just after that notable flood that washed the trees and everything else from the banks and the whole country out there?

A. Measured it before the flood, not Noah's flood.

X Q. 65. Well you don't pretend to say that river fills or ordinarily fills those banks?

A. No sir.

X Q. 66. It is a little mountain stream that people cross on rocks and use for trout fishing?

A. Yes they can walk across it on the rocks. At times that a man couldn't touch bottom.

X Q. 67. That is in pools?

A. Yes.

X Q. 68. Find them out in a pond where there is no stream at all?

A. Yes, in ponds.

X Q. 69. Now Mr. Hale the main reason that you say that running from the Unaka Road back to the Tennessee River, according to those calls, you would go around that way is because you believe Tennessee ought to have that land? Is that it?

A. No, because they said they followed the main ridge.

X Q. 70. What is the difference between this ridge called the State Ridge and those chains of mountains around there?

A. You mean in regard to elevation?

1707 X Q. 71. No, I want to ask you if one ain't a ridge and the other is a broken chain of mountains with big peaks and low valleys?

A. They are both ridges.

X Q. 72. Answer that question—if one isn't a ridge and the other isn't a chain of mountains with high peaks and low valleys?

A. Yes, you might say that.

X Q. 73. Unless the spur breaks off from another there is no ridge there?

A. There is a ridge all the way connecting with those gaps.

X Q. 74. How deep are the valleys?

A. No valleys, deep gaps in it, the deepest gap is Cold Spring Gap, and it is 225 feet below the McDaniel Bald.

X Q. 75. When you are in a place 225 feet deep to get out to climb on top you call that a leading ridge?

A. Yes, there is a back bone.

X Q. 76. Now in going a Southwest course from the Laurel Top and down to this place, number 5 on your map, and on towards the Tellico River, wouldn't you naturally follow the State Ridge as the leading ridge?

A. Yes, for a while you would—for one mile or more—for about a mile you would follow that as the leading ridge. At the end of about a mile you would branch off on the Rough Ridge on the mistake that you was on the State Ridge or leading ridge.

X Q. 77. The Rough Ridge don't run Southwest, does it?

A. Yes.

X Q. 78. Where it breaks off from the State Ridge?

A. Yes, more West than South, but still in a Southwesterly direction.

X Q. 79. But this State Ridge is the one that goes on down to the river and from there on across up towards the Unaka Road is where this North Carolina contention is that this line crosses, I mean goes?

A. It is the ridge that leads in the most Southwesterly direction, but it don't go on from the river, it stops there.

X Q. 80. Then on to another ridge, or something, it goes on as North Carolina claims from this end of State Ridge?

1708 A. It goes on to another ridge and reaches the top some distance from the river.

X Q. 81. Now coming from the Tennessee River on over here to Laurel Top and to figure 5 on the State Ridge, is as you have it mapped here?

A. Yes.

X Q. 82. The State Ridge from there on runs in a Southwesterly direction?

A. Yes.

X Q. 83. To run that ridge and go around to McDaniel Bald or Cold Spring Gap, I will ask you what direction you would go from figures 5 to the Cold Spring Gap?

A. A little East of South.

X Q. 84. It is about at right angles, isn't it?

A. No, it is hardly at right angles, but a Southwest course.

X Q. 85. Isn't it almost at right angles to the State Ridge?

A. Almost at right angles, yes, where it leaves the State Ridge but not at right angles to the general trend of State Ridge.

X Q. 86. Now then coming from the Jenks' Knob back to the McDaniel Bald and Cold Spring Gap, isn't that again almost at right angles with this Southwest line?

A. No.

X Q. 87. What direction is it?

A. About a half of a right angle.

X Q. 88. What direction is it?

A. Nearly East, a straight line from the Jenks Knob to the Cold Spring Gap is nearly East.

X Q. 89. Don't you go first a course a little East of South, then you go a course nearly West to get back to the point—is that right?

A. Yes.

X Q. 90. Now if you were running from Tennessee River to the Unaka Road along a ridge that runs a Southwesterly direction at a distance of 101 miles, which way would you go?

A. If I wanted to follow the ridge I would go around the head of the river. The general trend of the ridge from the Tennessee

1709 River to the Unaka Turnpike is Southwest. That Southwest course is not intended to record every crook and curve of the mountain. Some of those courses would be in the opposite direction.

X Q. 91. Please show me the points on this map that you have

made from figure 5 around to Jenks Knob that runs that Southwest course?

A. There is several courses in there that runs Southwest.

X Q. Is the general course Southwest?

A. Not from the figure 5 to Jenks Knob is not Southwest. The point at which of those figures? The point at Jenks Knob is Southwest.

X Q. 93. You don't travel Southwest to get to the points along this line?

A. Not as a whole you don't.

Cross-examination continued by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 94. Mr. Hale, I understand that so far as the survey is made showing the line through the Slick Rock basin that that was from your survey of 1896—that part of it?

A. Yes.

X Q. 95. The only things that you have added in your 1909 survey is the State Ridge and a portion up above the Tennessee River—from what point up there?

A. There may be a short distance of that Slick Rock Creek, as I stated yesterday, that I didn't survey, but took from Hyde's survey.

X Q. 96. But I mean so far as any survey made by you you have made no additions to your former survey, except the State Ridge a certain distance above the Tennessee River that you mentioned this morning?

A. Yes, that is correct.

X Q. 97. And that part of the survey that you took from Hyde—when did you take that from Hyde—in the preparation of which map?

A. The last map—after the map that was made in 1896 that was exhibited to my former deposition in the original case.

1710 X Q. 98. Can you indicate from what part of that line it was you hadn't surveyed personally when you testified in the original Hebard case?

A. Yes, there was a part of the creek in the vicinity of the mouth of Little Slick Rock that I hadn't surveyed at that time.

X Q. 99. Well, about how much of it?

A. There is something like two miles that is not plotted in the other map exhibit to my original deposition and then there is about a mile and a half in addition to that that I have never surveyed.

X Q. 100. Now where are the two miles exactly, and where are the mile and a half?

A. The two miles is from the mouth of Little Slick Rock up to the point of the ridge on which North Carolina contends is the State Line.

X Q. 101. That you never surveyed yourself but took from Hyde?

A. I have surveyed that but since the original deposition, and then about a mile or may be a little more than a mile down the creek, from the mouth of Little Slick Rock, that I never surveyed but took from Hyde's survey.

X 102. I don't know as I understand that last—a mile from the mouth of Slick Rock?

A. Little Slick Rock.

X Q. 103. Down Big Slick Rock that you have never surveyed at all?

A. Yes.

X Q. 104. From what did you take that in making your line?

A. From a map plotted on the same scale as mine.

X Q. 105. Whose map?

A. Hyde's map.

X Q. 106. Who was Hyde?

A. Daniel W. Hyde was a surveyor in this country about 1885.

X Q. 107. Is he living or dead?

A. He is dead.

X Q. 108. When did he die?

A. He died some 8 or 10 years ago.

1711 X Q. 109. How did you get his map?

A. From Mr. Seymour.

X Q. 110. A lawyer here in Knoxville?

A. Yes.

X Q. 111. The gentleman who was a witness in this case?

A. Yes.

X Q. 112. How far then touching the Slick Rock district and the contentions there, does your present correspond with the original map that you have testified about in the original Hebard case and furthermore on the bill of review?

A. Touching Slick Rock it corresponds with the map in the original case and bill of review from the mouth of Little Slick Rock to the mouth of Big Slick Rock.

X Q. 113. And then from the mouth of Little Slick Rock up to the junction is there any change between those maps—I mean this map?

A. Yes.

X Q. 114. What is the change?

A. The creek from the mouth of Little Slick Rock up to the head of the creek is only sketched in on the map in the original case, while in the, on the map Exhibit 1 in this case it is plotted from the mouth of Little Slick Rock up the creek showing the various meanders to the point of the ridge where North Carolina claims the line to be.

X Q. 115. Is there any difference between the angles that you gave in your other evidence and distances taking these two maps and comparing them—I mean now did these two maps, the map which you used in your original evidence and the map which you produce here?

A. In so far as the surveyed lines are the same the distances are the same.

X Q. 116. That is not answering my question.

A. I said so far as the surveyed lines are the same on each map the distances and the angles are the same, but on the map Exhibit 1 in the present case, there are surveyed lines that are

only sketched in the original map. There the angles may be different.

1712 X Q. 117. Well how far then would your previous testimony which has been introduced in this case from the two records apply to this new map in fixing those angles and lines and distances, etc.?

A. Just as far as it would apply to the original.

X Q. 118. You mean your testimony then so far as the originals were concerned would be equally applicable to this new map?

A. Yes.

X Q. 119. This map that you now produce you say in certain respects shows lines from actual survey and in the other map some of those lines were merely sketched in?

A. Yes.

X Q. 120. It is more accurate then, is it?

A. Yes, this map is more accurate in so far as the lines shown on here are from actual survey and in the other map sketched in.

X Q. 121. Where does that map commence, Exhibit 1—where does it commence on the Northeast end?

A. It commences at the 59th mile tree.

X Q. 122. And how did you find that?

A. I found that 59th mile tree in making a land survey several years before the first suit about this State Line.

X Q. 123. Did you find it yourself, or did somebody tell you?

A. I found it myself, but didn't know what it was at the time I found it.

X Q. 124. How did you find out what it was?

A. J. H. Wilson told me what the figures on that tree meant.

X Q. 125. What was the figures?

A. 59 M.

X Q. 126. Did it have the State Line marks on it?

A. I don't think I saw the State Line marks on the tree.

X Q. 127. Could any competent surveyor taking the report of the commissioners and going on to the Smoky Mountain Range find without any serious difficulty that 59th mile tree?

A. Not without he knew the locality of it.

X Q. 128. You didn't know the locality of it until you ascertained from somebody that it was the 59th mile tree?

1713 A. I didn't have any difficulty in finding the tree and the figures on it, but I didn't know what it was at the time I found it.

X Q. 129. Any other competent surveyor could have found it as readily as you did?

A. Yes.

X Q. 130. And that was an undisputed part of the State Line as you ascertained?

A. Yes.

X Q. 131. Did you ever survey any further back than that Northeastward?

A. No sir, not as a continuous line. I have surveyed on the State Line Northeast of that seven to nine miles, but not a continuous line.

X Q. 132. You have seen the 50th mile tree also?

A. Yes.

X Q. 133. It has figures on it?

A. Yes.

X Q. 134. What is on that tree?

A. 50 M, and while I am stating what the figures are on the tree, I believe on the 59th mile tree they would read M 59, instead of 59 M. I think the letter M *as* above the figures, and I believe they are in the same position on the 50th mile tree. I am not positive about that. I did not make any note of it.

X Q. 135. That 59th mile tree, according to your survey, is how far from the Tennessee River?

A. About 5½ miles, about that.

X Q. 136. Can you give us the exact measurement?

A. Not now I can't.

X Q. 137. Didn't you have a large book here yesterday with your field notes in it?

A. It is not here now, it is at the hotel.

X Q. 138. Well what did that book contain—field notes of what?

A. Many other field notes. It contained my field notes of the survey of 1896 and another survey of 1899 and numerous other surveys.

X Q. 139. Will you bring that book here in the morning, if you please?

1714 A. Yes. I can get it here in a few minutes. John will you get it and bring my valise?

X Q. 140. What is that book now, Mr. Hale, that you have in your hands?

A. Showing records of my surveys.

X Q. 141. Containing your field notes?

A. Yes, containing my field notes of many surveys.

X Q. 142. Surveys of this line that was made in 1896?

A. Yes.

X Q. 143. Is that an original book, a book of original entries, or a copy?

A. A copy of my field notes copied into this record so I can have a record of them if I lost the field books.

X Q. 144. You have your field books though, haven't you?

A. Yes.

X Q. 145. Now can you from that give us the exact distance from the 59th mile tree to the Tennessee River as you surveyed it?

—. Yes, by taking time to calculate it.

X Q. 146. Please do so?

A. It is 5 63/100 miles from the 59th mile tree to the North bank of the river following the undisputed State Line.

X Q. 147. Now on your line as measured to the river and along the lead to Hangover, where would the 65th mile end?

A. It would end 37/100 of a mile South of the North bank of the river.

X Q. 147. How far South of the South bank of the river?

A. 27/100 of a mile South of the river, a little bit over a quarter of a mile.

X Q. 148. Now in your testimony in the bill of review on page 205 of this record—you can look at it if you desire—down there you were asked the question about certain angles. You were asked this question: "Now, what did you ascertain to be the courses from your map called "the Hale map" in this case from the point that I have mentioned first, the Hangover and then to the junction." And your answer was: "From the river to the Hangover is South 8 West: from the Hangover to the junction South 60 West." Does that apply to this new map which you have put into evidence in this case?

1715 A. Yes.

X Q. 149. Both of those angles?

A. Both apply to the new map.

X Q. 150. Now could a competent surveyor, Mr. Hale, take that map of yours, this new map Exhibit No. 1.—I believe it is called—and after ascertaining the exact position of the 59th mile tree run that line as you have run it from your map?

A. Yes.

X Q. 151. The courses and distances however you have not marked on that map?

A. No, I haven't marked them on that map.

X Q. 152. They show from the lines that you have drawn?

A. Yes.

X Q. 153. Now what is the distance from the South bank of the Tennessee River around by Hangover to the Junction by your survey?

A. That would be to calculate the same as the other.

X Q. 154. Well now you calculate that by morning and give us the distance?

A. Yes.

X Q. 155. Now then will you also in the morning give us the exact distance from the river to junction by way of Fodder Stack that is up the Slick Rock?

A. No, because there is a part of them I have never surveyed. I have only taken that from another map.

X Q. 156. That you couldn't give us?

A. No sir.

X Q. 157. Can you approximate that—you have got a survey of it on your map and scale of it?

A. I can scale it off and give it to you approximately.

X Q. 158. Well do that—give whatever part of it that you can that you have surveyed accurately and what you haven't surveyed and simply have to scale that off give that as nearly accurate as you can. Make it from the hemlock tree down the River and then up the Slick Rock and up that spur to the Fodder Stack and to the junction, such parts of it as you have surveyed ac-

1716 curately and such parts as you have not surveyed as near accurate as you can, and then from the junction to County Corners or Hog Jaw Gap. Are those identical?

A. They are the same.

X Q. 159. Then from County Corners by way of the State Ridge to Jenks Knob?

A. All right.

X Q. 160. On page 26 of this record in the Fain case in your testimony I find a certain table of measurements there. Can we take those as accurate the bottom of the page, the first page?

A. Yes you can take those as accurate. They are calculated from these same notes and by using these would save a lot of calculation on the other as I presume the calculation would be the same.

X Q. 161. We want though what we asked for previous to this. I just asked that though in reference to some other questions I am going to ask you.

X Q. 162. Do you recognize these figures?

A. Yes I recognize these figures.

X Q. 163. Now in making your calculation as to distance in your answers heretofore with reference to that mileage from the 59th mile tree, did you take surface measurements or level measurements?

A. I took horizontal measurements.

X Q. 164. Now I notice on that map of yours a spur that comes down from Fodder Stack—that neither on that nor on the Fodder Stack Range itself or Big Fodder Stack that you have marked any elevations—why did you omit those—I am right that you did omit them?

A. Yes, except the elevations marked in two gaps on that ridge. The reason they are omitted I didn't take any elevation on that ridge except those two.

X Q. 165. And you took no elevations here at all, did you?

A. No sir.

X Q. 166. From the Glen Gap on the Big Fodder Stack down to the Fodder Stack to the junction of the spur which reaches down the Slick Rock and the spur beyond you have put on no elevations?

A. Because I had no elevations for that—took none.

1717 X Q. 167. Mr. Hale, you recollect, do you not, on that map of 1821, that from a point about a mile from the Tennessee River there is a spur run over to the mouth or about the mouth of Slick Rock?

A. Yes.

X Q. 168. Do you recollect that straight line?

A. I recollect the straight line. I now see the straight line from about a half mile North of the North bank of the river across the river to a point about 60 poles West of the mouth of the stream.

X Q. 169. Now point where that straight line commences on the North side of the river—down to that point does your map correspond with this map of 1821—in other words is that straight line the only diversion between your map and the map of 1821?

A. There is a lot of divergencies, and it would be almost impossible to fit the two maps together, as in fitting the line.

X Q. 170. Your map is on a larger scale and it shows all the small angles, while this map of 1821 shows but few small angles?

A. Yes.

X Q. 171. How about the general trend of the line?

A. The general trend of the line?

X Q. 172. Now leaving out that straight line and down to that point?

A. The general trend for about five miles North of the river is practically the same.

X Q. 173. In other words, between that point where that straight line goes off to the right and the 59th mile tree you both reach the same termini?

A. Yes, nearly. I couldn't say that it does reach the same termini, and I could not say that it does not.

X Q. 174. And you reach it over the Smoky Mountain Range do you not?

A. Yes.

X Q. 175. Have you tested the general trend of that map of 1821 with your map at other undisputed points of the State Line?

A. Yes.

X Q. 176. So far as the general trend is concerned, how do they correspond?

A. They correspond reasonably well in the undisputed territory.

1718 X Q. 177. I am leaving out now this Slick Rock contention and the Tellico contention.

A. I couldn't say that they are the same or any ways near the same in some points. At the point where it says path or paths to the Valley Towns strikes the Unaka Mountain the trend is the same for a distance but to take this trend from that point running Southeastward by the scale of 800 poles per inch and put that on the map at the same point at 80 poles to the inch and it would run it away into North Carolina.

X Q. 178. That arises from the fact that your map contains all the little angles and this map is on such a small scale that you can't detect the little changes?

A. No sir, it does not so arise. It arises from the fact that the map of 1821, if started on the Unicoy Mountain to run the line reversed or Southeastwardly that the general course of that one inch and a fraction run on the mountain on the ground that same trend you would run away off into North Carolina on Davis Creek. There is 800 poles. (Indicating by a ruler laid down on the witness' map Exhibit No. 1.)

X Q. 179. I see Mr. Hale—you took 8 inches on that. I see it is 5 inches here, 800 poles.

A. Yes, that is right. I counted this 80 poles to the inch, it is 160 poles to the inch. It is 80 chains to the inch.

X Q. 180. In your last answer you calculated 80 poles to the inch, whereas your map is 160 poles to the inch—now answer the question please with reference to that.

A. That then would practically plat the distance and the course and the general trend of the mountain from the Unicoy Mountain Southeastward.

X Q. 181. Now then what made you Mr. Hale even before you made the measurements say there was a great discrepancy there?

A. Because I measured that before—because I counted 80 poles to the inch when it should have been 80 chains to the inch.

X Q. 182. And when I asked you the question you made the same mistake when you first answered the question?

A. Yes.

1719 X Q. 183. And you find then in taking the true scale of your map that there isn't that discrepancy?

A. There is not that discrepancy at that point.

X Q. 184. Now do you know anything else on the undisputed line that there was a discrepancy that you have heretofore found?

A. That is the only one that I had in mind, or that I had tested.

X Q. 185. Where is the 64th mile mark on that map?

A. It is not marked on the map.

X Q. 186. Not on the map of 1821?

A. Oh I thought you was speaking of my map. The 64th mile is about a half mile North of the North bank of the Tennessee River.

X Q. 187. And is about where you make your 64th mile on your map which you put in in this case?

A. I have not made it on my map.

X Q. 188. But that is where it would be located on your map, the 64th mile?

A. Yes, 33/100 I believe I made it North of the river.

X Q. 189. I wish you would give us the angle at which your line crosses the river, Mr. Hale?

A. South 44¼ West.

X Q. 190. Now you calculate from that map of 1821 at what angle that straight line that is depicted there crosses the river?

A. No, I don't think I can, but it is nearly West.

X Q. 191. Well isn't it South about 70 degrees West?

A. It may be the line is so short and the scale so small that I couldn't tell, but it don't lack very much of being West. I would think it was more West than 70 degrees.

X Q. 192. Well calculate it as near as you can—you have got your meridian on the map there.

A. I wouldn't think there was over 10 degrees. I would think it was about South 80 West.

X Q. 193. Can you tell us at what angle down to that point of the 64th mile tree the line approaches the river, say for about 2½ miles back?

A. On which map?

1720 X Q. 194. On the map of 1821?

A. About an angle South 45 degrees West, something like that, I couldn't tell exactly.

X Q. 195. How far back are you going?

A. Going back 2½ miles.

X Q. 196. Say, going back for a mile and a half.

A. That don't change the angle much, a mile and a half. Going back one mile changes it considerably.

X Q. 197. Well, how much—what is the angle there for a mile there?

A. About South 30 West.

X Q. 198. South how much West?

A. About South 30 West.

X Q. 199. Now between the 62nd and 63rd tree, what is that general course there?

A. It is about South 80 West, something like that, may be South 82½ West.

X Q. 200. The general trend from as far back as the 59th mile tree is about South 45 West, is it not?

A. Yes, something near that.

X Q. 201. Mr. Hale, leaving that for a moment—going to that tree No. 30. I wish you would tell me again when you first examined that and before it was cut at all, what marks you discovered on it. You discovered marks on two sides, didn't you?

A. What tree is that?

X Q. 202. Tree No. 30 on Burns' map, going towards Slick Rock—you know from that hemlock?

A. Yes. I found marks on two sides on the East and on the West side of it.

X Q. 203. What did you find on the West side first?

A. I found two hacks above a blaze showing very clearly.

X Q. 204. And on the East side?

A. Two hacks above a blaze but not shown so clearly, and
1721 had to be taken in connection with the two hacks above a blaze on the West side to be certain that it was two hacks above a blaze on the East side.

X Q. 205. Now you saw the size of Mr. Burns' block here, didn't you—you examined that?

A. Yes.

X Q. 206. He took out the whole thing, apparently?

A. Apparently, yes.

X Q. 207. If you had taken out all of those marks your block would have been quite as large as his?

A. Yes, something near the *size* of his.

X Q. 208. But you cut out all the old marks and brought a slight proportion here of what you cut out?

A. Yes.

X Q. 209. And part of the block was left on the ground?

A. Yes.

X Q. 210. And part was taken by Mr. McNabb?

A. Yes.

X Q. 211. And a part by Williams?

A. Yes, and a part by myself.

X Q. 212. Do you know whether they have got their parts still?

A. I suppose they have them.

X Q. 213. What parts did they take?

A. One took a piece from one side of the block that I have, one took a piece from the other side of the same block. The piece that I have is the interior piece between the two that they have, is my recollection.

X Q. 214. Well their blocks with yours then wouldn't even show all the marks if brought into court, would they?

A. No.

X Q. 215. Now you don't know of any grants that were made back in that neighborhood as far back as 1821, do you?

A. No.

X Q. 216. Are there marks in that tree at all now on that East side?

A. No, I think not on the East side.

1722 X Q. 217. Did you go any further along towards the point opposite the mouth of Slick Rock looking for trees?

A. Yes.

X Q. 218. Did you find any more marks of any kind?

A. I found some of a kind but nothing that would indicate a State Line.

X Q. 219. No hacks or a blaze?

A. Yes, but they were comparatively young.

X Q. 220. Where did you find those now?

A. I don't remember whether they were hacks or a blaze and they were so distinctly not State Line Marks that I didn't change my mind.

X Q. 221. Do you mean on account of their apparent age?

A. Yes, they showed in the bark that they were young marks.

X Q. 222. Those hacks as I understand, are they made horizontal around the tree and the blaze made perpendicular?

A. The hacks are not horizontal, they slant a little, but the blaze is perpendicular on the tree.

X Q. 223. Sometimes it takes more than one chop to make a blaze?

A. Nearly always takes more than one chop to make a blaze.

X Q. 224. The hacks are simply cut through the bark into the wood, they don't take out any of the wood?

A. If struck hard they go into the wood, but frequently not hard and they don't show through the wood, through the bark I mean.

X Q. 225. Then to make a hack you don't remove any of the bark?

A. Nothing more than would chop off.

X Q. 226. In making a blaze you do remove the bark?

A. Yes, in making a blaze you do remove the bark.

X Q. 227. Now then the two hacks and a blaze were distinctly State Line marks, were they not?

A. Yes, that is a State Line mark, and as to whether or not the marks on a particular tree are State Line marks must be determined by the age and the marks.

X Q. 288. *And* people who run corners and who enter grants—surveyors I mean—in the habit of using State Line marks

1723 on any occasion that you are aware of?

A. Yes, I find them used as witness marks to a corner in a good many places.

X Q. 229. Did you ever find them in any other situation?

A. I find that it has been adopted as a trail mark by natives and hunters.

X Q. 230. They are deceptive though then, are they not?

A. Yes.

X Q. 231. What is a witnes mark?

A. It is one of the pointers to a corner. It is a mark made on the tree facing the corner set up on a tree marked as a corner.

X Q. 232. Do you mean by that there is always a group of trees marked?

A. If there is a group there and you have a tree marked as a corner, where the line would strike and leave, in case that tree should be destroyed and the corner obliterated he marks the tree next to the corner and they are witness trees to the corner.

X Q. 233. They may outlast the others and be evidence when the corner is gone.

A. Be an evidence of the corner even if the corner is destroyed.

X Q. 234. I understand you to say a while ago that that straight line struck at a point about 60 poles—did you say from the stream that is indicated there?

A. Yes, by the scale of the map.

X Q. 235. By the lines that were drawn on that map that State Line would seem to have crossed at the very same stream?

A. By the lines that are drawn it appears to me that the line crosses the river something like 60 poles West of the junction of the stream with the river.

X Q. 236. Some stream?

A. Yes.

X Q. 237. That map is drawn to the scale of how many poles to the inch?

A. 800 poles to the inch.

X Q. 238. Then 60 poles would be about between a thir-
1724 teenth and a fourteenth of an inch, would it not?

A. Yes, something like that.

X Q. 239. That would be about 700's of an inch, wouldn't it on that map?

A. Yes, about seven and a half hundreths.

X Q. 240. Do you think that a space of seven or seven and a half hundreths of an inch would be visible to the naked eye on the face of that map?

A. Yes.

X Q. 241. Would it indicate that there was a real space or may be that a line had just missed its mark a little bit?

A. It would mean that there was a space and if it was a sketched line it might mean that it missed its mark considerably.

X Q. 242. Do you know whether or not near the 64th mile tree there is a spur leads off to the left as you come down to the mouth of Cheoah River?

A. Yes.

X Q. 243. Did you ever go along that spur?

A. Yes.

X Q. 244. How much of a chain or range is it—is it high?

A. I never located the 64th mile tree.

X Q. 245. A distance of three quarters back from the river?

A. About three quarters of a mile from the river the most prominent ridge runs off in the direction of the mouth of Cheoah River.

X Q. 246. You say you have been along that ridge?

A. Yes, I have been out on the ridge.

X Q. 247. Did you ever see any marks on trees on that ridge?

A. No sir, no marks on that ridge, went out and searched it close.

X Q. 248. Do you remember the Lester Ridge that goes off to the right?

A. Yes.

X Q. 249. Where does that hit the river, if at all?

A. About opposite you might say, one end of it, the Lester Ridge runs across and connects with what is called Pine Mountain. The South end of Pine Mountain is just opposite the mouth of Slick Rock.

X Q. 250. You mean it is right on the bank—does it make a bluff or does it slope up?

1725 A. A high rocky bluff, pretty steep to the river.

X Q. 251. How near is that tree to the river, that tree No. 30 on Burns' map?

A. Within 10 or 12 feet of the river.

X Q. 252. And it bends over towards the river, does it not?

A. Yes.

X Q. 253. How near is that spruce pine or hemlock to the river?

A. I think it is something over 100 feet.

X Q. 254. Now going back to the spur that you say runs down towards the mouth of Cheoah River and you never discovered any marks of any kind on it that would indicate any survey for a State Line down there.

A. I went down about one quarter of a mile and found no marks.

X Q. 255. How far up Tennessee River is the point of junction with Cheoah River?

A. From where?

X Q. 256. From that hemlock tree where you cross the river with your line?

A. About a mile and a quarter.

X Q. 257. Isn't it a mile and a half?

A. I can get it by calculation.

X Q. 258. Suppose you do that and bring it to us in the morning as accurately as you can. Could you tell us at what angle you would have to go if you were at that hemlock if you were trying to reach the Cheoah River with a line?

A. Southeast.

X Q. 259. How much of an angle?

A. Couldn't tell without a protractor. Southeast 45 degrees or somewhere in that neighborhood. I couldn't without a protractor give the exact angle, somewhere in the neighborhood of South 45 degrees East.

X Q. 260. Could you by morning calculate for us the distance you would have to go if you went down the Cheoah, say a point 60 poles from the Cheoah River, and the angle you would have to take from there around to the junction, how far it would be that way, and what angles you would be going on?

A. I can't make that calculation. I have no data from which to make it.

1726 X Q. 261. You have laid down the Cheoah River on this map of yours?

A. Yes. I have laid it down, but how to get from a point 60 poles West of Cheoah River to connect with some point surveyed along is what I couldn't get.

X Q. 262. You haven't been along that ridge that runs from Hangover down towards the mouth on the South side of the river down to the mouth of Cheoah?

A. No sir.

X Q. 263. That is a very high ridge and a very continuous ridge?

A. That is a ridge that branches off from the ridge which Tennessee contends the line is on about a mile and a half or two miles from the river. It is a spur of the ridge running from opposite the hemlock to the Hangover.

X Q. 264. And it runs down towards the mouth of Cheoah River?

A. Yes.

X Q. 265. Whether you can calculate it the angles that you would have to take if you were trying to run a line from the point where that hemlock is and around to the Hangover to the junction would not fit in by anything and be at greater angles to the East and much more West than any of the angles that are indicated on your map or on the map of 1821?

A. Yes. Just to go from the hemlock 60 poles West to the Cheoah would be just as absurd as it would be to go from the hemlock to the mouth of Slick Rock.

X Q. 266. Your idea then, Mr. Hale, is that it would be just as absurd to go down to the Cheoah which is to the left and a mile and a quarter or a mile and a half and a large angle Southeast as it would be, as you said, to go a half mile to the West and South and on a line that was running admittedly Southwest—you say one would be just as absurd as the other—is that your idea?

A. One is about as absurd as the other.

1727 January 4, 1911, at 5:30 P. M., the further taking of proof was adjourned to 9:30 A. M., January 5, 1911.

January 5, 1911, at 9:30 the taking of proof was resumed, pursuant to adjournment.

Present (for North Carolina): C. B. Matthews, Esq.; Ben Posey, Esq.; (Mr. W. R. Hopkins).

(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

W. D. HALE, resuming the stand for further examination, deposed and said:

Cross-examination continued by Mr. MATTHEWS on behalf of complainant, State of North Carolina:

X Q. 267. Mr. Hale, have you made those calculations that I asked you for?

A. Yes. The first one, the distance from the South bank of the river by way of the Hangover to the junction 8-63/100 miles. The second was from the Hemlock by way of the mouth of Slick Rock and Big Fodder Stack to the Junction is 11-48/100 miles. The next was from Junction to County Corners 7-72/100 miles. The next from County Corners to Jenks Knob by way of State Ridge 5-28/100 miles. The next from the Beech or Hemlock on the bank of the river to the mouth of Cheoah River 1-16/100 miles. But in explanation to the second distance given, that is, by way from the Hemlock by way of Fodder Stack to the Junction there was 1-73/100 miles of that surface measure and to make the correction
1728 would reduce that distance 27/100 of a mile by approximate calculation, leaving the distance 11-21/100 miles.

X Q. 268. Now from what map did you take that calculation from the Hemlock to the Slick Rock and thence to the Fodder Stack?

A. By this map, Exhibit No. 1.

X Q. 269. Prepared by you—that is your exhibit No. 1?

A. Yes. Made it from the field notes from which this map is made.

X Q. 270. You have got your field notes with you in court, have you not?

A. Yes.

X Q. 271. All of your surveys on that line?

A. Not all of them, but all of the surveys from which this map is prepared.

X Q. 272. Will you permit the stenographer to make a copy of those field notes.

A. Yes, I will permit him, but there is a copy of most of these field notes filed as an exhibit to my deposition in the original case in book form.

Gen. CATES: The State of Tennessee has no objection to counsel for North Carolina making all the examination desired of the field notes of the witness or any other papers that the witness may desire to submit to them. But Tennessee does object to incumbering this record with a book of field notes and having them copied in by the stenographer.

X Q. 273. Will you Mr. Hale submit those to the stenographer so that we can examine them while in his custody?

A. I have no objection to you examining the field notes, but copying the field notes for private purposes I object to that.

X Q. 274. I disclaim any *at*tention to do that, and furthermore will not permit it to be done.

A. Certainly I will permit them to be examined.

X Q. 275. You designated the County Corners as synonomous with Hog Jaw Gap, haven't you?

A. Yes.

1729 X Q. 276. Now I see in the case of Stevenson v. Fain in the figures called for yesterday that you have the distance from Tennessee River to Laurel Top put down as 14.93 miles; from Laurel Top to Hog Jaw Gap .6 of a mile, making all together

15-53/100 miles. You now give us from the South line of the Tennessee River to Junction 8-63/100 miles and from the Junction to Hog Jaw Gap or County Corners 7-22/100 miles, making 16-35/100 making 82/100 more. How do you account for that?

A. The only way I can account for it is by some mistake in the calculation.

X Q. 277. Do you know in which calculation the mistake is?

A. I don't know. It must be in the first calculation. In the second calculation I was checked by Mr. Muller.

X Q. 278. Did you make those calculations that you are testifying to this morning at all, or did Mr. Muller make them?

A. I made them with Mr. Muller looking on. One thing more, there may be a discrepancy in the beginning and the ending of the two lines, may be a difference in that. That would make a slight difference.

X Q. 279. What was the difference?

Mr. HOPKINS: 82/100 of a mile.

X Q. 280. I called your attention yesterday to certain figures on page 26 of this Fain record and asked you if those were correct, and you said they were, I believe.

A. Unless there was some mistake made in the calculation they are correct.

X Q. 281. They are the evidence that you gave in the Fain case?

A. Yes.

X Q. 282. I hand them to the stenographer, Mr. Meyerhoff and ask him to embody them in the deposition.

Gen. CATES: Just read them off—the questions and answer to him.

Mr. MATTHEWS: In questions 19 in the examination of W. D. Hale in the case of Stevenson v. Fain, taken from the record that was filed in the Supreme Court of the United States
1730 on appeal from the Circuit Court of Appeals of the Sixth Circuit at the bottom of page 26:

"Q. 19. If you have computed the distances by your actual survey from the Tennessee River to Laurel Top, thence to Hog Jaw Gap, thence to Jenks Knob, thence to the Unaka Mountain, thence to the Pike Road, and thence to the Hiawassee River, state the distances between these points and the total of them?"

"A. The total from the Tennessee River to the Hiawassee River is 44 and one-fourth miles—44.22 to be close. The distance from Tennessee River to Laurel Top is 14.93 miles. Laurel Top to Hog Jaw Gap .6 miles. Hog Jaw Gap to Jenks Knob 11.54 miles. Jenks Knob to Unaka Turnpike, where it crosses the mountain 5. miles. From Unaka Turnpike, where it crosses top of the mountain to Hiawassee river 2.87 miles. Making in all 44.22 miles."

X Q. 283. Now Mr. Hale yesterday when we quit we were talking something about the relative position relative to the Slick Rock Creek and Cheoah River. At the mile tree on the North or Northeast side of the river looking at the river Slick Rock Creek is on your right hand, is it not, and Cheoah on your left hand?

A. Yes.

X Q. 284. Coming down the ridge North of the river, can you see the Cheoah River?

A. Yes, you can see the gorge very clearly.

X Q. 285. You can see the gorge where it somes out?

A. Yes.

X Q. 286. But you can't with the eye follow the course of the river itself?

A. You can pretty closely follow the crest of—I mean you can pretty closely follow the course of the river by the gorge—you can't see the water.

X Q. 287. Look on your map there and see if you have shown any part of the Cheoah River?

1731 A. Yes, I have shown about a mile of Cheoah River.

X Q. 288. Why don't you show more of it?

A. Didn't survey more.

X Q. 289. Look on the map, the blue print copy of Mr. Burns' Exhibit — and look at the platting of the Cheoah there and see if you can tell or at all recognize it as being correct?

A. I would say the general trend of that was correct, of course I couldn't speak of the exactness of it.

X Q. 290. Well you notice on that after it leaves the point where you stopped platting it sorter turns to the North or Northeast, do you not?

A. No it turns to the Southeast.

X Q. 291. Well isn't it about East?

A. You take several miles of it in there and it is about Southeast. For a short distance from Bear Creek where I stopped surveying it's Southeast—South about 60 or 70 East. You take the trend of it from Bear Creek for several miles and it is nearly due Southeast.

X Q. 292. Now look at the line of the Slick Rock Creek on this blue print and also on your map and the line as platted of Cheoah, and see if the Cheoah River doesn't come in at a line at about at right angles to the creek?

A. Nearly at right angles. The general trend is about at right angles.

X Q. 293. I don't mean that the Cheoah River ran into Slick Rock Creek. They both run into the Tennessee River—is that a fact?

A. Yes.

X Q. 294. But at some distance apart?

A. Yes.

X Q. 295. And it is a fact, is it not, that if you follow with the eye the trend of the Cheoah River it's going further away from any of these so-called State Lines. Is not that a fact?

A. Yes, that is a fact.

X Q. 296. You don't know, do you, how long it is?

A. Cheoah River?

X Q. 297. Yes.

1732 A. No.

X Q. 298. Do you know whether this Snow Bird Creek runs into it up here at Cold Spring Gap that rises apparently near

Cold Spring Gap, do you know whether that runs into the Cheoah River?

A. Only from outside information.

X Q. 299. What is that information?

A. It is that it runs into Cheoah River.

X Q. 300. Now did I understand you yesterday that in going up Slick Rock Creek you couldn't see beyond the Hangover Ridge?

A. Yes.

X Q. 301. That is correct, is it?

A. That is correct.

X Q. 302. Then *if* the commissioners in running that line up the Slick Rock Creek they couldn't see the Cheoah River at all?

A. No, no, not after they would get to the Tennessee River.

X Q. 303. And your assumption then that they may have plotted the Cheoah River, or intended to plot the Cheoah River for that little stream that they call "Creek," goes upon the theory that they went over Hangover?

A. Yes, and sketched that stream.

X Q. 304. And from the top of Hangover and the ridge they could see Cheoah?

A. Yes, from the ridge in places they could see Cheoah.

X Q. 305. And see its direction?

A. Yes.

X Q. 306. And see that it was getting further away from them all the time?

A. Yes.

X Q. 307. Do you know from tradition or otherwise where the Cheoah rises, where its source is?

A. No, I do not. It is in the Southeastern part of Graham County. That is more of a conjecture with me.

X Q. 308. Or tell how long it is?

A. No.

X Q. 309. Could you tell, say 10 miles from its mouth, how far it is from the State Line as you laid it out?

1733 A. I could not.

X Q. 310. And say a mile and a half from its mouth, could you tell how far East it is of the line you laid out?

A. It would be a mile and a half East I should judge.

X Q. 311. Wouldn't it be nearly three miles?

A. I don't know.

X Q. 312. When you said a mile and a half you were simply guessing?

A. Yes, guessing. That is all guess with me.

X Q. 313. Had you ever heard that it rises near Topton?

A. No sir I never heard that. I have got no information on Cheoah River more than that Robbinsville is on the river. Outside of that I have no information two or three miles above its mouth. After two or three miles I have no information about it.

X Q. 314. You know how far Robbinsville is above its mouth?

A. No.

X Q. 315. Do you know whether it has numerous branches, like

Big and Little Santeetlah, for instance, that are larger than Slick Rock?

A. I don't know anything about the size of the streams, I know that Big and Little Santeetlah run into Cheoah.

X Q. 316. You have only plotted Snow Bird. Why didn't you plot Little and Big Santeetlah and Buffalo Creek?

A. I don't know where they are, I don't know the location of them.

X Q. 317. It drains a great deal more country than either Citico or Tellico?

A. I couldn't answer that question.

X Q. 318. You don't know?

A. No.

X Q. 319. Now take your map there Mr. Hale please. You have it before you I believe.

A. Yes.

X Q. 320. And take where the 64th mile tree would be located and take your ruler and find where a line running South 80 degrees West would strike the river?

1734 A. I can't locate the 64th mile tree on this map.

X Q. 321. Well then locate your 64th mile point, won't you?

A. I can't do that without a scale and a protractor.

X Q. 322. I understood you yesterday that your 64th mile point and the 64th mile tree—I asked you Mr. Hale yesterday if your 64th mile point and the 64th mile tree on the map of 1821 corresponded, and I understood you to say yes.

A. No, I didn't say that, for I never located the 64th mile tree or any corner that would designate that place in any survey that I have ever surveyed.

X Q. 323. Well take a distance back on your map then of 63/100 of a mile in the North bank of the river. Will you mark your point North of the river 64 miles and mark it South 80 West—now that point that you have put on your map in ink at the Northeast terminus of that line that you have just marked South 80 West was taken at 63/100 of a mile from the North bank of the river, wasn't it?

A. Be a straight line, but making no allowance for deviation.

X Q. 324. Now where does the Southwest of that line strike with reference to the creek, the stream designated "Creek," or the Slick Rock Creek as you have got it on your map?

A. It strikes on the point of the ridge East of Slick Rock Creek on my map.

X Q. 325. Well if continued where would it strike Slick Rock Creek?

A. Something like 20 poles from the mouth of the creek.

X Q. 326. And when you say on the point of the ridge, how far after you stopped East of the creek there?

A. From 15 to 20 poles East.

X Q. 327. Now in your testimony on the bill of review you recollect testifying in the old case of Hebard that has been for-

merly referred to and often alluded to in this case. You were asked this question on that examination—you were asked, as shown on page 205 of the printed record in the bill of review of Hopkins & others, v. Hebard, United States Circuit Court of Appeals for the Sixth Circuit, the following question:

1735 "Q. What did you find to be the general course of the line indicated on the map of 1821, from the point where it leaves the river on the South side, for a distance of seven miles to where it bends to the East, or to the left, as you look down in that direction, what is that course? Give the general bearing of it?"

And did you answer:

"A. South 44¼ West?"

A. Yes.

X Q. 328. Now that point a distance of seven miles to where it points to the East. What is that point? How would you designate it by name?

A. I don't know that I catch your question?

X Q. 329. Isn't that the Fodder Stack?

A. Yes, South 44¼ West 7 miles would fall in that locality of the Fodder Stack.

X Q. 330. And now this question was asked you on page 205 of the printed record in the same case:

"Q. Now, did you obtain also the general bearing of the next three miles on that same map, after leaving the elbow made by that turn to the East or left that I *I* have just mentioned?"

"A. Yes."

"Q. What is the general bearing of that?

"A. South 20 degrees East."

Did you answer that?

A. Yes.

X Q. 330. Now those figures, both of them are correct, so far as your investigation showed?

A. Yes, unless there was some error in calculating them.

X Q. 331. Now where would that line run the next of about three miles projected on a line South 20 degrees East land you?

A. Somewhere in the neighborhood of the Junction.

X Q. 332. You put those lines at the hearing of this case on a copy of the map of 1821?

1736 A. I believe I did, but I am not positive.

X Q. 333. That was filed in this re-hearing matter?

A. I believe I did, but I am not positive.

X Q. 334. Did I understand you yesterday, Mr. Hale, to say that there was some parts of this map that you have put in as your Exhibit No. 1 that included portions of the line not actually surveyed by you?

A. Yes.

X Q. 335. There was some difference of opinion about that, and I wish you would state again just what portion of the line you took from the notes of some other surveyor and di not personally survey?

A. About one mile or may be a little more than a mile from the

mouth of Little Slick Rock Creek down Big Slick Rock Creek was not surveyed by me. The map was made from Hoyt's survey for that portion of it.

X Q. 336. Were there any of the ridges there that were not surveyed by you?

A. No.

X Q. 337. Did you survey the Little Fodder Stack?

A. Yes. There is one ridge sketched in, not surveyed. I surveyed the Little Fodder Stack Ridge and the ridge extending from the Little Fodder Stack by way of Stiff Knee down to the mouth of Big Slick Rock Creek, but there is a bend of that ridge between Stiff Knee Gap and the creek leaving the ridge and running into the bend of the river that I did not survey, but only sketched in.

X Q. 338. Was that the one that you spoke of a while ago that was sketched, or is there any other ridge or spur that was merely sketched in?

A. Yes, there are some short spurs running off South or Southwest from the Fodder Stack Ridge that were not surveyed by me. The Rough Ridge was not surveyed by me but only sketched. Some ridges West from the contention at the head of Tellico leading North that are not surveyed but only sketched.

X Q. 339. Did you survey these ridges or spurs down near the Tennessee River which are just to the left of the line that you have and which look like fingers and between that and Slick Rock?

A. No, the spurs West of the line.

1737 X Q. 340. How was that answer?

A. No, the spurs West of the line. The ridge between that and the mouth of Slick Rock are not surveyed. Further up the river from the line was surveyed.

X Q. 341. I notice a spur running down just to the right of your line to the Tennessee River that puts off apparently from what you call the Hangover Ridge. What is that intended to be?

A. That is a spur and was surveyed.

X Q. 342. That is different from the one which you say went down towards the mouth of Cheoah, is it?

A. Yes.

X Q. 343. And the one down toward the mouth of Cheoah, you haven't depicted on that?

A. No.

X Q. 344. And you haven't on this map shown the line as claimed by North Carolina up Slick Rock?

A. No, I simply showed the creek as surveyed as far as North Carolina claimed the line following the creek. The creek was sketched above the point where North Carolina claims the line leaves the creek.

X Q. 345. And you didn't attempt to put any elevations on the Big Fodder Stack other than the two that you mentioned?

A. That is all, that is all I have.

X Q. 346. I see Mr. Hale that you have sketched these little ridges to the East of Slick Rock and to the West of your line as

run and near to the Tennessee River differently on this map from the way that they were sketched on your original map?

A. Those are just sketched in by memory, showing that there were spurs running down there to the river from that point, but don't pretend to show or to say that there are just so many spurs in that exact location.

X Q. 347. Or that is the exact shape of them?

A. Or that that is the exact shape of them.

X Q. 348. You made no distinction in running the Hangover Ridge or Lead as you call it between the Hangover itself and
1738 the Tennessee River, do you,—I mean in your style of etching?

A. No, except the etching is narrower where there are gaps.

X Q. 349. In fact, however, that ridge doesn't commence until you get about a quarter of a mile North of the river?

A. It commences practically at the edge of the water and runs abrupt for about a quarter of a mile to the top and then you are on a crest of a ridge.

X Q. 350. I understood you yesterday to say that you didn't pretend to show on this map all the topographical features of the country?

A. No sir.

X Q. 351. Your other map showed some ridges on the North of the river that you have omitted on this map—your old map showed some—why is that?

A. Because it was not claimed either by North Carolina or Tennessee that the line followed those ridges.

X Q. 352. You have numerous ridges on your map, both of them, that nobody claims that the line is on?

A. Yes, there are several of them.

X Q. 353. Why was it that you showed all of the streams on the Tennessee side of the line and didn't show any except that Snow Bird on the other side?

A. I was better acquainted with the streams on the Tennessee side and could more nearly approximate the location.

X Q. 354. You didn't survey those, they are sketched in?

A. No, they are sketched in.

X Q. 355. Why didn't you show that part of the Ocoee Land District which purports to show the Slick Rock Creek and the Big Fodder Stack Lead for its Eastern boundary of the State Line?

A. I wasn't asked to show it in making this map.

X Q. 356. Were you asked not to show it, or said that it was not wanted?

A. No, they simply asked me to make an outline of the State Line as contended for by both parties and the ridges and streams as claimed.

X Q. 357. Would you have any objection Mr. Hale to marking the line on your map there, say in red ink, and properly designating it as the line claimed by North Carolina?

1739 A. No, I have no objections.

X Q. 358. Will you please do that in red ink, Mr. Hale?

A. Yes, I will do it and designate it in red ink as requested by you.

X Q. 359. There is no stream Mr. Hale joining the Tennessee River right at that place opposite the Hemlock, is there?

A. No.

X Q. 360. That bluff runs along the river about a quarter of a mile each way from that point where you take the State Line over.

A. It is very steep ground for a quarter of a mile each way up the river a considerable distance before you reach the bluff, then there is some bluffs on the face of the mountain.

X Q. 361. Do you remember anything about the State of North Carolina having a survey made in 1897 of this line?

A. Along about that time I knew of surveyors being in there surveying or, at least, heard them testifying as to having been in there surveying. I don't remember that I met any of the surveyors on the ground.

X Q. 362. And don't you know that those surveyors ran this line as it is claimed now by the State of North Carolina?

A. All I know of that is that some surveyors testified to running that line there, and I think filed maps showing that line.

X Q. 363. How many forks are there of the Tellico River, Mr. Hale?

A. There is what is called three forks of it—the North fork, the main or the South fork, and the middle or West fork. The South fork is sometimes called the South fork and sometimes the main fork and sometimes the South fork.

X Q. 364. The map of 1821 only shows two forks—see if it shows the South fork at all?

A. It shows only two forks.

X Q. 365. You know which one is left off?

A. The West fork is left out.

X Q. 366. Is that different from the South fork?

A. Yes.

X Q. 367. Mr. Hale, you spoke of some trees on the Little
1740 Fodder Stack range. Did you find any that resembled State Line marks?

A. In outward appearances, yes.

X Q. 368. How old did they seem to be?

A. I think to the best of my recollection we blocked out marks in 1896 that were between 25 and 30 years of age.

X Q. 369. You didn't find any any older?

A. We found different ages, but I don't remember that we found any over 30 years old.

X Q. 370. Also you spoke of State Line marks or marks resembling State Line marks being used on witness trees. Isn't it a fact that they are only used on one side of the tree?

A. Witness trees are only marked on one side.

X Q. 371. And on the State Line they are put on both sides, are they not?

A. Yes, but sometimes they don't show, but they are supposed to be on both sides.

X Q. 372. And you spoke also of some kind of marks or the same

kind of marks being used on trails—where have you ever seen the State Line marks on trails?

A. I cut out on the Pine Mountain, may be two miles or more West of the Big Fodder Stack on the side of the trail a block out of a white oak tree that bore the marks. I couldn't give you the age of the marks at that time, but they were the proper age to have been made in 1820, 1821 or 1822.

X Q. 373. Well, is Pine Mountain North Carolina or Tennessee?

A. In Tennessee.

X Q. 374. What were the marks?

A. Two hacks above a blaze.

X Q. 375. On both sides of the tree?

A. Don't think they showed on but one side.

X Q. 376. And was there a trail there?

A. Yes.

X Q. 377. How many blocks did you produce in the old Hebard trial—do you recollect?

A. I do not.

1741 X Q. 378. Were there more than two?

A. I think there were, but I couldn't be positive.

X Q. 379. One of those were rotten inside so that the age of it could not be correctly or accurately counted?

A. Yes, there was a block from a sourwood tree that was hollow and didn't show the mark inside.

X Q. 380. Did you ever hear of the State Line North of the Tennessee River being remarked in 1853?

A. No sir.

X Q. 381. I asked you if you made any further search along the North bank of the Tennessee River from the Hemlock, or a point opposite the Slick Rock, for any other marked tree. Did you say that you had?

A. Yes, I have searched that.

X Q. 382. Could you say certainly that there are none others that bore State Line marks near that place?

A. None that I could find.

X Q. 383. And you looked carefully?

A. Yes. I found some trees marked and the marks showed so distinctly that they had been recently made that I paid no attention to them.

X Q. 384. How many times did you make search there?

A. Once I made a thorough search. Searched both going up the river and then back down again. This is the only time I ever made a thorough search of it.

X Q. 385. Did you see this tree No. 30?

A. At the time I blocked tree No. 30.

X Q. 386. You made the search at the time you blocked tree No. 30?

A. Yes.

X Q. 387. That was in September of last year?

A. I think it was.

X Q. 388. From the spruce pine on the North of the river, about

100 feet North of the river bank, are you certain there was never any State Line trees nearer to the river than that?

A. Never could find any nearer than that.

1742 X Q. 389. And is it not within your knowledge that State Line trees have been destroyed and burned and disappeared in some way?

A. No, not in that particular locality, but I know of trees further North that have disappeared.

Redirect examination by Gen. CATES, on behalf of the defendant, State of Tennessee:

R. D. 1. Mr. Hale, you have been asked on cross-examination about finding State Line marks on trees West of Slick Rock, and you were also asked if the State Line marks didn't appear on both sides of the tree when it was intended to be on the State Line and as I understood your answer it was "Yes." Did you mean to say that where there were only three hacks for a side Line tree that it was on both sides of the tree?

A. No, three hacks for a Side Line mark is only one side of the tree. Two hacks above a blaze, a fore and aft mark, should be put on both sides of the tree.

R. D. 2. Now directing your attention to Burns' tree No. 30, which you and McNabb and Williams blocked on the upper side and he blocked on the lower side and both blockings as I understand them from your testimony show that there were two hacks and a blaze on the upper and lower side of that tree, made some 57 or 58 years ago. Is that correct?

A. No, the blockings didn't show that.

R. D. 3. I don't mean the blocks, but the act of blocking?

A. The act of blocking did not show that, but the marks in the bark showed two hacks above a blaze. By blocking we demonstrated that that blaze is 57 or 58 years old.

Mr. MATTHEWS: We object to that as a repetition of the examination in chief.

R. D. 4. Do there appear to be hacks there 57 or 58 years old above the blaze?

A. That appeared in the bark, but I didn't see it in the wood.

R. D. 5. Now I will ask you to state Mr. Hale whether if

1743 there was a blaze on the bark of that tree, as it appeared there on the upper or lower side, where would that blaze have been in the bark?

Mr. MATTHEWS: I object to that as not re-examination or anything that was brought out in cross-examination, and is the same as mentioned in his examination in chief.

A. The blaze in the bark would be the last marking, and the last marking showed it to be 57 or 58 years of age.

R. D. 6. Now directing your attention particularly to Tellico, upon which you were cross-examined by Col. Posey. I believe you were asked if you went there into that territory about 1896 to survey for

any other person than some one who claimed the land. I will ask you to please state whether you went there to run out any particular line, or whether you went there to ascertain where the boundary line between the States was, or is?

A. My instruction was to ascertain the line between the State of North Carolina and the State of Tennessee, using the report of the commissioners as a guide.

R. D. 7. Now your attention was also directed by Col. Posey to Cross-Question 129 and your answer thereto in the case of Stevenson v. Fain, the answer being "one hundred and five-tenths miles from Catalouchee Turnpike." That is, one hundred and five-tenths miles from the Catalouchee Turnpike to the Unaka Turnpike Road?

A. Yes.

R. D. 8. I will ask you to state whether or not that answer assumed that it was 65 miles, exactly, from the Catalouchee Turnpike to the Tennessee River?

A. Yes.

R. D. 9. Then between the Tennessee River and the Unaka Turnpike Road, where the report of the commissioners recites a stone was set up bearing the legend "101 M." According to your survey it was 35 5/10 miles; that is deducting 65 miles assumed by you as the distance from the Catalouchee Turnpike to the river from the 100 5/10 miles, set out in your answer to said question 129?

1744 A. Yes.

R. D. 10. And that 35 5/10 miles was the distance running by way of the State Ridge, as I understood you to say?

A. Yes.

R. D. 11. Now in running that distance from the Tennessee River, did you pass along the Hangover Lead and over Hangover by way of Stratton Bald, or did you come around Slick Rock?

A. Passed over the Hangover Lead. It would have been further to have gone around by way of Slick Rock.

R. D. 12. You were asked by Col. Posey about whether you found any trees around this main ridge or the divide of the waters running around the headwaters of Tellico. What was your answer to that?

A. That I didn't find any trees that I could swear were State Line marked trees.

R. D. 13. Did you find any marked trees?

A. I found some trees that slightly resembled the State Line marks.

R. D. 14. Where were those trees?

A. They were in the neighborhood of the Horshaw Knob between the Rocky Gap and the Jenks Knob.

R. D. 15. You were asked by Col. Posey whether there was any map that showed the line to run around McDaniel Bald and I don't remember precisely what your answer was, but I will ask you this question. If the map of 1821 shows the line as running around the headwaters of Tellico River, doesn't it necessarily run around the ridge by way of McDaniel Bald?

Mr. Posey: The State of North Carolina objects to that question

because it is leading, suggesting to the witness the answer and it is incompetent.

A. It shows following the crest of the ridge, which it does, and it undoubtedly goes by way of McDaniel Bald. I think my answer was that eliminating the etching on the map and taking the line alone that it would not go by way of McDaniel Bald, but would fall West of it.

R. D. 16. Do you know how much West of McDaniel Bald?

A. No.

1745 R. D. 16. Now you were also asked by Col. Posey about whether State Ridge up there at its Northeast end was a leading ridge and, if I remember aright, you said it was one of the leading ridges. I will ask you to state whether or not it is the main ridge in that locality and, if not, give your reasons for it?

A. No, it is not the main ridge. It is a spur of the main ridge from the fact that it ends at Tellico River, while the main ridge is the water shed of the Tellico River and waters to the Eastward and Southward, and even assuming that it is the main ridge to Grassy Knob, after passing Grassy Knob, Rough Ridge would have precedent over the State Ridge as the main ridge.

R. D. 17. Why?

A. Because it is the higher and more prominent ridge, carries its height better.

R. D. 18. Does Rough Ridge, like the ridge called the State Ridge, also end North and East of the Tellico River?

A. Yes.

R. D. 19. State whether there is any physical connection between this ridge designated as State Ridge and the main ridge of the mountain on the South and West side of the Tellico River?

A. None. The State Ridge is entirely cut off from the Jenks Ridge that should connect it by the Tellico River.

R. D. 20. Now you were cross-examined by Mr. Matthews in relation to a copy of your map in the Hebard-Belding case, purporting to be a "map of leading ridges, etc.", a copy of which, on a reduced scale, is filed as Exhibit "A" to the answer and cross-bill of Tennessee in this case, and I call your attention to that map, and ask you to state if you meant that the Slick Rock Creek as is laid down there in the basin between Hangover Ridge and Little and Big Fodder Stack Ridges on the West was merely sketched in from the junction between Little Slick Rock and Big Slick Rock?

A. Yes. From the mouth of Little Slick Rock to its head it is merely sketched in.

1746 R. D. 21. On this map, Exhibit "A" to the answer and cross-bill of Tennessee?

A. Yes.

R. D. 22. But how is it on this map which you have filed as Exhibit No. 1?

A. It is put in by survey.

R. D. 23. Surveyed by yourself from the mouth of Little Slick Rock to where?

A. To where the State Line is claimed to leave the creek by North Carolina.

R. D. 24. Now is that point where it is claimed by North Carolina that the State Line leaves the creek the point where a ridge runs down to the creek somewhat Southeast of Big Fodder Stack?

A. Yes.

R. D. 25. Now did you survey that ridge running up from the creek to the Big Fodder Stack Ridge?

A. Yes.

R. D. 26. Now I see on this map, Exhibit "A" to the answer and cross-bill of Tennessee somewhat Westerly from Big Fodder Stack a place that you have indicated as "Pine Mountain." Is that correct, approximately?

A. Approximately correct, yes.

R. D. 27. Now was it out in that direction some two or three miles from Big Fodder Stack that you found the trees bearing State Line marks to which you referred yesterday?

A. Yes.

R. D. 28. Trees, I mean, along a trail which was shown to you by William Debity?

A. Yes, on that mountain and two miles and possibly more than two miles from the Fodder Stack.

R. D. 29. Now you were asked on cross-examination by Mr. Matthews if you had ever heard of North Carolina having this territory surveyed out in 1897 down Slick Rock Creek from Big Fodder Stack Ridge, and your answer was, as I understand it, in substance that you didn't see the surveyors at work, but that you heard of some surveyors being in there.

A. That was the substance of my answer.

R. D. 30. Who were they?

1717 A. I don't remember, there have been so many in there.

R. D. 31. Was it Hyde and Lovinggood?

A. I think Hyde was one of them and there seems like there was a Carver one of them, but I don't remember about Hyde.

R. D. 32. Since your attention was directed to that, I will ask you where prior to that time North Carolina or North Carolina claimants had been contending that the line between the States was located?

Mr. MATTHEWS: We object to that.

A. I think the first contention was by way of Big Fodder Stack, Little Fodder Stack and Stiff Knee and down the ridge West of the mouth of Slick Rock Creek. Afterwards the contention was to the Little Fodder Stack and down the ridge to the mouth of Little Slick Rock or its junction with Big Slick Rock and down Big Slick Rock Creek.

R. D. 33. I will ask you to state if while the contention was being made that the boundary line between the States was along Big Fodder Stack and thence along Little Fodder Stack to the place you have described you and Mr. Muller were not sent in there to see what you could ascertain in regard to the facts—marked trees, etc.?

A. Yes.

R. D. 34. Now you were asked if you found trees in there bearing State Line marks—those you were examined about—those matters in the original Hebard-Belding case?

A. Yes.

R. D. 35. And your recollection at that time was much more distinct than it is now?

A. Yes.

R. D. 36. Now I will ask you to state if on one of those examinations made by you and Mr. Muller you and he didn't find the first tree that was found bearing anything resembling State Line marks on this ridge leading from Big Fodder Stack Ridge down to Slick Rock Creek, as you have laid it down here on this map?

A. That was the first that I ever heard of it.

R. D. 37. About where was that tree located that you and Muller found?

1748 A. It was some 20 chains East of the Big Fodder Stack and down from the junction of that ridge with the Fodder Stack Ridge.

R. D. 38. Will your notes show where that tree is?

A. Yes.

R. D. 39. Please refer to your notes and tell us where that tree was?

Mr. MATTHEWS: I object to all this because it is not going over anything that was brought out in the cross-examination, and the cross-examination was confined to a particular tree North, on the North side of the river, and this testimony relates to contentions that was not brought out on cross-examination.

A. That tree was on the spur 19 chains from its junction with the Fodder Stack Ridge.

R. D. 40. Now then was that tree mentioned by you or referred to or reported by you in your examination in the Hebard-Belding case?

A. I think so.

R. D. 41. Now I will ask you to state whether it was after that was done and that tree reported by you that you heard of Hyde and Carver and others running that line down the ridge to Slick Rock and thence down Slick Rock to the river?

A. Yes it was after I had reported it and after I had testified to it.

January 5, 1911, the further taking of proof was adjourned at 12:10 P. M. to 2:00 o'clock P. M.

January 5, 1911, at 2:00 P. M. the taking of proof was resumed, pursuant to adjournment.

Present:

(For North Carolina:) C. B. Matthews, Esq.; Ben Posey, Esq. Mr. W. R. Hopkins.

(For Tennessee:) Charles T. Cates, Jr., Attorney General
1749 of Tennessee; T. E. H. McCroskey, Esq.

W. D. HALE, resuming the stand for further examination, deposed and said:

Redirect examination continued by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 42. Now Mr. Hale, please refer to this map of yours, Exhibit No. 1, which shows the surveyed line of Slick Rock Creek from the Tennessee River and up to the ridge leading from Big Fodder Stack, and tell us the distance along that river as surveyed since your map was made in the old case, how it is that no marked trees appear?

A. I can't give you the exact distance. From the mouth of Little Slick Rock Creek up to the point where North Carolina contends the line leaves the creek is 3 7 100 miles. To that add about one mile below the mouth of Little Slick Rock Creek that is not marked for a mile and a half. I don't know just the distance from the mouth of Little Slick Rock Creek down to the first marked tree.

R. D. 43. Now have you been in there on Slick Rock Creek since you testified in the Hebard-Belding case?

A. Yes.

R. D. 44. I mean since you testified under the bill of review in that case?

A. No.

R. D. 45. But since you testified in regard to marked trees in the Hebard-Belding case?

A. Yes.

R. D. 46. Did you search for marked trees along Slick Rock?

A. Yes.

R. D. 47. Then do I understand you to say that you found
1750 none from a point about a mile below the mouth of Little Slick Rock and up Slick Rock to where the ridge leading from Big Fodder Stack joins to Slick Rock?

A. From a point about one mile and a half up Slick Rock Creek from the river to the point of the ridge on which North Carolina claims the line, a distance of four miles or four and a half, I couldn't find a marked tree.

R. D. 48. Were you on both sides of the creek?

A. Yes, searched every tree within several rods of the creek.

R. D. 49. Do you mean to say that you could not find a single tree bearing State Line marks, or a single tree that was marked in any way?

A. A single tree bearing State Line marks. I might have found a tree marked by hunters or passers-by.

R. D. 50. What were you doing there?

A. I was searching for State Line marks.

R. D. 51. Describe the character of your search?

A. Our search began at the mouth of the creek, visiting every tree that was anywhere close to the creek on both sides of the creek and searching them closely for marks.

R. D. 52. Is it easy or difficult to get over the ground along that creek?

A. It is easier now then it was at that time. At that time a part of it was very difficult. At the present time there has been so much passing up and down there that a good deal of laurel has been cut away, so that you can get to and from the trees easier.

R. D. 53. You were asked on cross-examination by Mr. Matthews to show the distance of your running from Little Tennessee River by way of Hangover and the Junction and Laurel Top and State Ridge to the Unaka Turnpike and it seemed, or it was claimed by counsel appearing for complainant that there was some discrepancy between the figures as given by you and those which appear to have been given in your testimony in the case of Stevenson v. Fain, which were read to you. Have you gone over that again?

A. Yes, over the portion that he asked about and in which the discrepancy was shown—that is from the river to the County Corners.

1751 R. D. 54. From the river to the County Corners?

A. Yes.

R. D. 55. Well, what is it?

A. I find from the river bank, the South bank of the river, to the Junction is 8 46/100 miles, instead of 8 63/100. From the Junction to County Corners is 7 73/100, instead of 7 72/100, making the discrepancy instead of 88/100 of a mile 66/100.

R. D. 56. Now you have been asked on cross-examination about a line which appears to cross the Tennessee River on the boundary line as shown by this map of 1821, and sometimes the first mile circle North of the river was, as I understood it, referred to as the 64th mile circle and sometimes as the 65th. I will ask you Mr. Hale to count those mile circles on this map of 1821 from the beginning; that is, from the beginning point at the Catalouchee Turnpike or Big Pigeon River, as shown on this map of 1821?

A. I have counted those mile circles. If you count the circle at the beginning of the line at the Catalouchee Turnpike and the two circles close together about the 30th mile somewhere near it you have 66 circles North of the river.

R. D. 57. Now Mr. Hale if the first circle North of the river is the 66th circle counting the beginning circle as one that would indicate that at that point ended the 65th mile, would it not?

A. Yes.

R. D. 58. But if these two circles, which are very close together up here about the 39th or 40th, are really intended for one circle, then this last circle North of the river would indicate only 64 miles from the beginning?

A. That is correct.

R. D. 59. According to the scale on this map of 1821, how far North and East of the Tennessee River is that first circle on that North east side from the bank of the river as laid down on that map?

A. About 145 poles.

R. D. 60. How many feet is that?

1752 A. 2,392 feet.

R. D. 61. Now what is the width of the river where that line crosses, as shown on that map of 1821 according to the scale thereof?

A. 170 poles.

R. D. 62. How many feet in that?

A. 2,805 feet.

R. D. 63. You were measuring on this line of the map of 1821 that crosses the river, were you not?

A. Yes.

R. D. 64. Now how wide is the river at that place?

A. 568 feet from the top of bank to top of bank.

R. D. 65. How much of the banks do you measure in?

A. I don't know how much the slope of the bank was, might be 10 or 12 feet on each side.

R. D. 66. Well now Mr. Hale assuming that in sketching this Tennessee River in on that map it was stretched on each side of its true width until as laid down on the map it appeared to be 2,805 feet where this line crosses it, how much of that 2,805 feet would be on each side of the river?

A. 1,118 feet.

R. D. 67. Mr. Hopkins has just asked Mr. Hale if his answer is predicated on the assumption that the water is equal on both sides. Is there any reason to suppose that they would have done the stretching all on one side?

A. I don't know that there is.

R. D. 68. How did you get that 1,118 feet?

A. I subtracted the actual width of the river 568 feet from the 2,805 feet which gives me 2,237 feet. That divided by 2 would give the spread on each side, assuming that it would spread equally each way.

R. D. 69. Then if that was the case, this mile circle on the South bank of the Tennessee River was some 1,118 feet South of the South bank of the river, was it not?

A. Yes, that would be the result from the calculation.

R. D. 70. And that first mile circle on the North bank of the river would be some 3,510 feet North of the river; that is the

1753 2,392 feet shown by the actual distance of the scale of the map shown to be between the mile circle and the bank of the river and the 1,118 feet, increased width in the river would it not?

A. Yes that is correct.

R. D. 71. 3,510 feet?

A. Yes.

R. D. 72. Now you were asked about a mile tree, the 64th mile tree I believe they call it, North of the river. Did you find any tree

there on the North side of the river which you could testify was the 64th mile tree?

A. No sir.

R. D. 73. Did you search for it?

A. Yes.

R. D. 74. Mr. Hale, have you ever seen a grant from the State of Tennessee which called for a 64th mile tree on the bank of the river?

A. Yes.

R. D. 75. I will ask you to examine this certified copy of a grant being No. 22,179 from the State of Tennessee to John H. L. Peck, issued by Newton Cannon, Governor of Tennessee, on November 28th, 1838, and ask you to read the description contained in that grant?

A. "Five thousand acres lying in the County aforesaid on Tennessee River, beginning at a White Oak marked as the 64 Mile Tree on the State Line and on the bank of the river then with the meanders thereof twelve hundred and fifty poles when reduced to a straight line to a stake, then North twenty East Six Hundred and Forty poles to a stake, South eighty east Twelve Hundred and Fifty poles to a stake near a locust marked as the 62nd, Mile Tree, on the State Line, then with the same to the beginning. Surveyed 22nd of November, 1838".

R. D. 76. Please file this copy as Exhibit No. 10 to your deposition?

A. I so file it.

R. D. 79. Who was John H. L. Peck?

A. I don't know.

R. D. 80. Do you know whether he was a surveyor?

1754 A. No, I do not.

R. D. 81. Do you know whether he was the son of Jude Jacob Peck?

A. No, I do not.

R. D. 82. Did you ever see the survey of that tract of land?

A. Yes. The description in the survey is identical with the description in the grant.

R. D. 83. Who made the survey?

A. Robert Wearing.

R. D. 84. Who was Robert Wearing?

A. I don't know. I find his name principally to surveys and entries.

R. D. 85. I will ask you if you know if he was not the Deputy Surveyor General of the Hiawassee District?

A. No sir, I do not

R. D. 86. That part of Blount County Northeast of the river and West of where the State Line crosses it was in the Hiawassee District, wasn't it?

A. Yes.

R. D. 87. Now you were also asked about the angle on which this line on the map of 1821 crossed the Little Tennessee River. I

don't remember now what your answer was, but you didn't attempt to give the angle from accurate measurement or examination, did you?

A. No, it was only approximate, guessed at it and that is all the way you can get it from that map, by guessing at it.

R. D. 88. Why?

—. The scale is so small you can — get the exact angle from it.

R. D. 89. Is there anything wrong with the distances on that map, the courses as laid down on that map?

A. Yes.

R. D. 90. What is it?

A. You can't follow anything from the courses on that map, any particular ridge or stream.

R. D. 91. How do you know?

A. I figured it. In taking an angle from the 59th mile circle to the river and beginning to run a line on that.

1755 R. D. 92. Would its supposed courses carry you with the main ridges of the mountain?

A. No sir, three quarters of a mile from the ridge.

R. D. 93. On which side?

A. Part of the time in Tennessee and a part of the time in North Carolina.

R. D. 94. I see up here at the upper end of the map Mr. Hale a big star, which is supposed to indicate the North and South courses on that map. Is that map laid down in compliance with the North and South course as indicated by that star?

A. I can't tell you whether it is or not.

R. D. 95. Have you examined it?

A. If you will eliminate the etching on that map it is not worth the paper it is put on.

R. D. 96. Why not?

A. It is just a sketch map of the elevation of the report of the commissioners. You can't fit the courses of any line to any ridge in there so far as I have been.

R. D. 97. Did you ever try to ascertain whether this direct South line from the Turnpike crossing on up the Hiawassee River is a direct South line according to the course and distance given by this star upon the upper end of the map?

A. Lacks 7 or 8 degrees of it.

R. D. 98. Now you were asked to lay down on your map, Exhibit No. 1, a line beginning at a point 63/100 of a mile North of the Tennessee River and running on a course of South 80 West, was you not?

A. Yes.

R. D. 99. Well how long was that line you laid down on your map according to the scale of it in compliance with that question or request on cross-examination?

A. One mile.

R. D. 100. Do you know why you were asked to lay it down at a course of South 80 West?

1756 A. Because I suppose I had approximated the course of the straight mile that crosses the river on the map of 1821.

R. D. 101. Had you done more than guessed at that course from looking at the map?

A. No.

R. D. 102. Can you take a protractor and tell what that course is of that line that runs across there?

A. Not unless I knew that North point was correct or not.

R. D. 103. And whether this line which is laid down from the Catalouchee Turnpike to the river and at that point is in conformity with the true North and South line as it ought to have been put down on the map?

A. Either the north point is wrong or the course calling to run due South to the Georgia line is wrong, and I don't know which is wrong and therefore I can't get any correct bearings from the map.

R. D. 104. You have examined this map since it has been here before you during this testimony, have you not?

A. Yes.

R. D. 105. Are you familiar with map making and the subject of maps?

A. Yes.

R. D. 106. And I will ask you to state whether in your opinion that map was made by one man?

A. The work seems to be one man's work.

R. D. 107. Now I will ask you to state about how long in your opinion a reasonable good draftsman or a good draftsman of such a map would require to make or sketch in a map like that and place on it the names and places that was written on it?

A. I wouldn't want to attempt to do it in less than a week with any degree of accuracy.

R. D. 108. You don't seem to have much of an opinion as to the accuracy of that map?

A. I don't believe I could lay down the courses and distances and do the etching on that or sketching that was done in less than a week.

1757 R. D. 109. That line calls to be 116 miles long. How much of it are you familiar with?

A. About 54 or 55 miles of it.

R. D. 110. That is back from the 59th Mile Tree to the Hiawassee River?

A. Yes, and then about 50 miles in the neighborhood of the 50th Mile Tree.

R. D. 111. And all your surveying life of 30 years has been spent in surveying lands in the mountains like that?

A. Yes.

R. D. 112. What time, in your opinion, would be required for a corps of surveyors with their helpers and assistants and the necessary outfit taking into consideration the character of the country which they had to pass over, to make a survey of that line from the Catalouchee Turnpike to the Georgia Line?

A. Ought to have at least 58 days.

R. D. 113. You think on an average of two miles a day would be good work?

A. Yes, would be good work considering the nature of the country.

R. D. 114. In 1821 it hadn't been traveled at all to amount to anything?

A. Very little I presume. I was not there.

R. D. 115. How did you find the mountain between the 59th Mile Tree and the Unaka Turnpike when you first went on it?

A. Found about half of it that was exceedingly rough and brushy. Then a portion of it had been cleared along the top of the mountain I could make fast time on it and then some of it the timber was open and could make reasonably good time on that, but a great deal of it was so brushy that I couldn't make a half a mile a day, growed up with laurel.

R. D. 116. Now you were asked about the calls and courses and distances in your book of surveys, running from the 59th Mile Tree Southwesterly to the river. I will ask you to state how many, if any, known mile trees are standing between the 59th mile tree and the river?

A. None. There are some corners of grants that J. K. Wilson, who was familiar with the North Carolina lands along the line informed me the location for the mile trees.

1758 R. D. 117. What mile trees?

A. One at the 61st mile tree and one at the 62nd mile tree.

R. D. 118. Does the distance as run by you from the 59th mile tree to the 61st mile tree run out just two miles?

A. No.

R. D. 119. What is the distance as run by you from the 59th mile tree to the 61st mile tree?

A. Three miles and 21 chains, 42 poles.

R. D. 120. From where?

A. From the 59th mile tree to the 62nd mile tree is 3 miles and 42 poles.

R. D. 121. That is from the 59th mile tree to the 62nd mile tree it is 3 miles and 42 poles?

A. Yes.

R. D. 122. How many feet in 42 poles? Approximately?

A. 693 feet.

R. D. 123. Now have you got there the actual distance as run between the 61st and 62nd mile tree?

A. No—yes I think so.

R. D. 124. Is it exactly a mile or more than a mile or less than a mile?

A. I don't remember. I don't believe I have got those notes here.

R. D. 125. Now have you got the exact distances as run by you between any other mile tree Northeast of the 59th Mile Tree?

A. No.

R. D. 126. A good deal has been said to you Mr. Hale about this line running in a Southwesterly direction and particularly by Col. Posey, if I remember, you were asked if leaving the spot known as County Corners about where the fifth parallel section appears on your map and thence going around the headwaters of Tellico River by way of Mitchell Lick you didn't run in a Southeastern direction, and I believe you said yes. Is that correct?

A. Yes.

R. D. 127. Now I will also ask you to state if according to the way Mr. Burns lays down this line between a point near Big Fodder Stack and the place called Junction, he didn't run up considerably Southeast?

1759 A. Yes, about three miles the line is Southeastward.

R. D. 128. Now you were asked by Mr. Matthews in regard to the distance of Cheoah River from the Hangover Ridge. I will ask you to give your opinion about the approximate course in which the Cheoah River turns away from the Hangover Ridge as compared with the line of this stream marked a "Creek," and the main ridge of the mountain South of the Tennessee River which we claim to be Hangover?

Mr. MATTHEWS: I object to that because the plats would show it, mere matter of opinion.

A. The stream marked "Creek" on the map of 1821 after it makes the turn to the Eastward turns away from the State Line on that map at about the same angle the Cheoah River turns away from the Hangover Ridge.

R. D. 129. Now I will ask you Mr. Hale if I am correct in understanding that this part of the line between Big Cove Gap and Haw Knob and Laurel Top is undisputed?

A. Yes.

R. D. 130. Now what is the course of that part of the line?

A. That is rather Southeastward about four miles of it.

R. D. 131. Now taking into consideration the whole line as it is laid down by you on the map as contended for by Tennessee from the Little Tennessee River to the Unaka Turnpike, what is the general course of that entire line?

A. Be Southeastward.

R. D. 132. Now yesterday Mr. Matthews was asking you about other lines found to have been marked with two hacks and a blaze and you said you had found many trails so marked and you were asked if that was not deceptive and if I remember aright, you answered yes. What did you mean by that?

A. I don't remember that question, I believe.

R. D. 133. You were asked at any rate if two hacks and a blaze along a trail were not deceptive. Was that it? What did you understand by the question in which the word "deceptive" was used. I can't give you the exact question because the stenographer has not written it up.

1760 A. I don't remember that question.

R. D. 134. Is there anything deceptive about two hacks and a blaze along a trail?

A. Only be where it has been adopted as a trail mark, and you find it all through the woods in that country.

R. D. 135. Have you ever been over that trail which is called Cheoah or Tellassee and which comes down Slick Rock and into the town of Tellassee?

A. That is a public trail and the trees are hacked and cut in many different ways.

R. D. 136. You were asked why you didn't put Lester Ridge on this map, Exhibit No. 1 of yours. Was there any reason why you should not put it on?

A. None whatever.

R. D. 137. Will you put it on if counsel for North Carolina desire it put on?

A. Yes.

R. D. 138. No trouble to follow that Lester Ridge from the main ridge down to the Little Tennessee River, is there?

A. No sir.

R. D. 139. Been over it?

A. Yes.

R. D. 140. Find anything on it?

A. Nothing but a trail on it. Found some paths, trail paths, that is all I found. Found no line or land corners of any kind.

R. D. 141. You were asked by Mr. Matthews if the surveyors went up Slick Rock Creek whether or not they could see Cheoah River from Slick Rock Creek and I believe you said no.

A. I said no.

R. D. 142. I will ask you to state whether or not if they went up Slick Rock and thence around that ridge and up Fodder Stack and thence Fodder Stack Ridge to Junction, whether they could see that runs out to Hangover and enclosed the headwaters of Slick Rock Creek?

A. If they could see it at all they could see the surroundings—
they could see they were surrounding the headwaters of
1761 Slick Rock Creek, surrounding Slick Rock Creek.

R. D. 143. Was there anything to keep them from seeing that this ridge over 5,000 feet high from Stratton Bald out here to Hangover was East and South of the headwaters of Slick Rock?

A. Nothing but the fact of closing their eyes would keep them from seeing that divide there.

R. D. 144. From your knowledge of the actual location of Slick Rock Creek from personal examination on the ground, I will ask you to state whether or not that stream running into the Tennessee River on the South side near the State Line as shown by the map of 1821 can be Slick Rock Creek?

A. No, it can't be.

Recross-examination by Mr. MATTHEWS, on behalf of the complainant, State of North Carolina:

X Q. 390. Mr. Hale, when you spoke of the 62nd Mile Tree, is that a marked tree 62 miles from it?

A. That is a corner of a North Carolina grant that I am informed was located at the 62nd mile tree.

X Q. 391. You stated in your previous examination that the only two trees marked with the mile marks on them was the 50th and 59th?

A. Yes.

Redirect examination by Gen. CATES, on behalf of the defendant, State of Tennessee:

R. D. 145. I call your attention, Mr. Hale, to certifies copies of grants from the State of North Carolina, Nos. 1499, 1500 and 1501, to William H. Thomas—all bound together, certified by the Secretary of State of North Carolina, and in Grant No. 1499 I notice that the beginning call is:

"Beginning at a white oak at the sixty two mile tree in the State Line, runs with the State Line East eighty poles to a stake, etc."

Then the beginning call of Grant No. 1500 is:

1762 "Beginning at a Hickory 63rd mile tree in the State Line runs East with it three hundred and twenty poles to a white oak and Locust 62nd. mile tree in the State Line, etc."

Then in Grant No. 1501 the beginning call is:

"Beginning at a white oak sixty four mile tree in the State Line sixty poles from the river, runs North sixty five East one hundred and twenty poles to a pine, then North thirty East one hundred and forty poles to a Hickory 63rd. mile tree in the State Line, then South four hundred and sixty poles to the river, then down the river to a Rock opposite the beginning, then East sixty poles to the beginning. Entered the 9th day of July 1852."

I will ask you to file this paper as Exhibit No. 11 to your deposition?

A. I so file it.

R. D. 146. How many feet in 60 poles?

A. 990.

Recross-examination by Mr. MATTHEWS, on behalf of the complainant, State of North Carolina:

X Q. 392. Did you—is that description correct as to the 64th Mile Tree?

A. I don't know. I have never located that.

X Q. 393. Would you think it about correct?

A. I don't remember from my measurements whether it is or not.

X Q. 394. Why did you put that exhibit in as your exhibit?

Gen. CATES: I submit that the State of Tennessee puts that exhibit in.

1763 Redirect examination by Gen. CATES, on behalf of the defendent, State of Tennessee:

R D. 147. Did you ever see that paper before, Mr. Hale?

A. No.

Recross-examination by Mr. MATTHEWS, on behalf of the complainant, State of North Carolina:

X Q. 395. Did you ever see this Exhibit No. 10 before?

A. Yes, I have seen that on the record.

X Q. 396. Now I was asking you about that 62nd Mile Tree—that you only knew from tradition or hearsay that it was the 62nd mile tree?

A. That is all.

X Q. 397. Did you measure this mile and 42 poles on your map, or from the map of 1821, or on the ground?

A. On the ground.

X Q. 398. Surface measurement?

A. No sir, horizontal measurement.

X Q. 399. You measured it yourself?

A The chainman measured it and reported it to me.

X Q. 400. There is nothing official about an entry, is there Mr. Hale—the private parties get up the description and get the entries and make out the entries themselves?

A. Yes.

X Q. 401. Now these contentions that you spoke about—I believe you mentioned two lines over there—one of them that you mentioned was the Little Fodder Stack was a part of it, and what was the other?

A. Both to the Little Fodder Stack.

X Q. 402. And down the Little Fodder Stack to the river?

A. One down on the Little Fodder Stack by way of Stiff Knee to the river, the other leaving the Fodder Stack Lead at the
1764 Little Fodder Stack and running down to the Slick Rock Creek at the junction of Big and Little Slick Rock.

X Q. 403. Who was making those contentions?

A. I can't state positively, I have never read the bills, but that was my understanding from the attorneys that the Belding people were making that contention in the case of Hebard v. Belding.

X Q. 404. You never knew about the State of North Carolina making such contention?

A. No.

X Q. 405. You were familiar were you with the grant to that entry 1035 which was known as the big grant of 14,800 acres in Graham County?

A. No, I am not familiar with it.

X Q. 406. Have you never read it?

A. No.

X Q. 407. The one under which Belding claims?

A. No, I don't think I ever saw that.

X Q. 408. You don't know whether that was granted in 1860, that that was granted in 1860, described the State Line as being on Slick Rock Creek and the Big Fodder Stack?

A. No.

X Q. 409. You don't know of the State of North Carolina ever having acted on any McClellan survey, or making any claim with reference to it?

A. No. I only know from tradition and information from Mr. Posey who represented some of the North Carolina parties that McClellan was employed by the State through attorneys to make the survey.

X Q. 410. Now in regard to the width of the river and so on—you spoke of a tree beyond Fodder Stack or Pine Mountain. The tree that you found about 20 chains East of Big Fodder Stack was on the spur running down from Big Fodder Stack, wasn't it?

A. Yes.

X Q. 411. On the line claimed by North Carolina?

A. Yes.

X Q. 412. Now without regard to the width of the Tennessee River isn't it a fact Mr. Hale that from the point I gave you this
1765 morning 63/100 of a mile back from the Tennessee River running over there 80 degrees West, that that land lays within less than 200 feet of the South line of the Tennessee River?

A. I couldn't state that it does because I couldn't accurately get that bearing.

X Q. 413. Well inaccurately or accurately that is about it, isn't it?

A. From 200 to 300 feet.

X Q. 414. And it ends at that point without regard to whether the river is a foot or a mile wide, don't it?

A. Yes.

X Q. 415. Now Mr. Hale, I wish you would look at the 39th mile tree—39th and 40th—that appear on this map of 1821. Well would 39 and 40 be very close together?

A. Yes.

X Q. 416. Very much closer together than any other trees or mile circles, are they not?

A. Yes.

X Q. 417. The other mile circles seem to be uniform width or distance apart?

A. No, some of them very much closer together than others.

X Q. 418. Any of them closer together than 39 or 40?

A. No.

X Q. 419. Right close together at the point where one piece of the map was pasted together?

A. Yes.

X Q. 420. I will ask you whether or not, in your opinion, 39 & 40 don't represent the same tree, in your opinion?

A. Yes.

X Q. 421. The same circle, mile circle I should say?

A. Yes.

X Q. 422. And counting those as the same and leaving out the first, do not these various points mentioned in the commissioners' report, like the "Equinottey path" and so on, come out right?

A. Counting that as one mile circle North of the river
1766 would—counting that as one, the mile circles North of the river would represent 64 full miles and some fraction of a mile to the river.

X Q. 423. The point I am asking you about is whether these various monuments or salient points don't come out right—for instance the Equinottey path at 53 miles?

A. I didn't notice it at the Equinottey path. I can count it—yes, the Equinottey path would come out near the 53rd mile tree.

X Q. 424. How near?

A. Would be some 200 or 300 feet from it.

X Q. 425. It might be due to the small scale you think of the map and any error or inaccuracy that might occur?

A. Due to the manner of sketching the map, it is a sketched map throughout.

X Q. 426. Mr. Hale, I don't recall what you said when I asked you what trails you had seen with marks on them similar to State Line marks?

A. The trail on the Pine Mountain running Eastward from the Big Fodder Stack, a trail along the top and sides going under the top from Big Fodder Stack by way of Little Fodder Stack; trail down the ridge running from Little Fodder Stack to the mouth of the Little Slick Rock Creek, and other trails, I don't remember what others. I have noticed several trails in that vicinity.

X Q. 427. How many did you find on the Pine Mountain trail?

A. I think there were three, one I blocked, two I didn't.

X Q. 428. Did the one you blocked have a fore and aft mark on it?

A. I don't think the marks were on but one side of it.

X Q. 429. It was two hacks above a blaze?

A. Two hacks above a blaze was on one side of the tree and very old and the other side of the tree was weather beaten and if it had ever been put there it was worn off.

X Q. 430. Are those marks there yet, so far as you know, on the Pine Mountain?

A. I doubt if they are there. They were very dim when I was there and that has been 12 or 14 years ago. I doubt if they are there. The tree that I blocked the marks would be there if it
1767 is still standing. It was on the decline and it may be now gone.

X Q. 431. Now on the Little Fodder Stack are those young marks or old marks?

A. My recollection they run between 20 and 30 years of age at the time I was there. I don't remember that I found any over 30 years of age—very near about the same age as those on the ridge running into the fork of Slick Rock Creek. I think I also found some marks of that character on the Salts Springs Mountain. On the trail that follows the top of the Salts Springs Mountain. That is, West of Stiff Knee.

X Q. 432. Find those in Tennessee or North Carolina?

A. In Tennessee.

X Q. 433. Those now all old marks?

A. Range from 25 to 30 years of age at that time in my judgment. I didn't block any of them.

X Q. 434. They are easily distinguished from being marked on one side of the tree?

A. Trail lines usually are marked on both sides of the trail so as to be seen in going each way on the trail. I saw one other tree in that connection, down near the trail, I don't remember whether there was any trail leading by it, marked with two hacks and a blaze on Little Slick Rock. It had been blocked, I don't know who blocked it, but the marks were there and the marks seemed to be seventy odd years old.

X Q. 435. When did you see those?

A. Some two years ago.

X Q. 436. When you spoke of having along with you the commissioners' report, did you have any more of it than was embodied in the statute of the State of Tennessee confirming the report?

A. No.

X Q. 437. The part that I read to you:

"The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore-and-aft tree, and three chops on each side line tree; and mile marked at the end of each mile; agreeably to the plats which accompanies this Report, and which said plats and Report are certified by
1768 us in Duplicate, one for each of said States, in the same words, marks and figures, etc."

That part you didn't have?

A. That is copied from the North Carolina Code I think, and I didn't have that. I had the part copied from the Tennessee Code, which does not describe the marks.

X Q. 438. But that is in the commissioners' report—I am not reading from any North Carolina Code?

A. The paper I had with me was copied from the Code of Tennessee, the description in that.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 148. You were asked if you had before you the report of the commissioners when you made that survey, which report specifically describes the marks upon a fore and aft and also upon a side line tree. You didn't know anything about the old report which was found in the capitol afterwards, at that time?

A. No.

R. D. 149. I will ask you if it had become known generally among surveyors who had done work on the State Line examination what the State Line marks were?

A. Not by me. I learned it from a fellow who was examining the State Line marks when Oscar W. Muller went there, we didn't know what the State Line marks were and for that reason we went to undisputed ground North of the Tennessee River to acquaint ourselves with the marking. I found a number of trees marked with two hacks above a blaze, some appeared to be State Line marks, some with fore and aft marks, and we formed our opinion from that, that that was the State Line marks and recognized no other. After that

J. K. Wilson accompanied O. W. Muller and myself on another survey and Wilson told us that was the State Line mark and that he was familiar with it, and we only hunted for fore and aft trees
1769 didn't recognize three hacks as a State Line mark at all. We saw that but thought it was land corners following a State Line.

R. D. 150. You had not then seen the North Carolina Act which described the marking?

A. No.

R. D. 151. You were asked several questions by Mr. Matthews in regard to this line which he had you lay down across the Tennessee River 63/100 miles North of the river. I don't remember whether you said anything about that when you laid the line down at his request, but I will ask you whether the beginning point of that line on the North side of the river is 63/100 of a mile from the river according to the way you run it?

A. By a straight line making no allowance for the deviation of the crest of the ridge from a straight line.

R. D. 152. You mean it is a straight line by a rule from the line of the river as it appears here on this map?

A. Yes.

R. D. 153. Instead of following the contour of the mountain around?

A. Yes.

R. D. 154. How far it is Mr. Hale from the Georgia Line at the end of the State Line as laid down on this map of 1821 to Knoxville?

A. Somewhere in the neighborhood of 120 miles.

R. D. 155. How long would it require a party of surveyors to travel that distance over that particular country as it must have been some 90 years ago?

A. It would take 4 days. It may not be 120 miles. By the Louisville & Nashville Railroad it is somewhere near 100 though. I couldn't just give the miles. It is marked on the railroad on mile posts.

R. D. 156. And you still think it would take three or four days to travel it?

A. Yes, to take the character of the country as it is and was at that time I would think it would take 4 days to travel.

R. D. 157. Now tell me whether you are acquainted with the handwriting of Robert Armstrong?

A. I have seen it very often, but I couldn't swear to it.

R. D. 158. Several days ago when Mr. Robert T. Quarles
1770 was on the stand he was examined about a map which he or the examiner referred to as the Hiawassee Purchase map and upon which it appeared from that examination the name of Robert Armstrong was written. Now I will ask you to look at the name of Robert Armstrong as it purports to be signed to this map of 1821. Do you know whether that is Robert Armstrong's signature?

Mr. MATTHEWS. I object to that, because he has not qualified

himself as an expert, and also he said he couldn't swear to his signature.

R. D. 159. All right, I will put it this way: Mr. Quarles has here for examination that map which was referred to above as the Hiawassee Purchase Map upon which the name of Robert Armstrong appears just in front of the word "Surveyor," the legend being written "Robert Armstrong, Surveyor," and underneath that appears to be written "R. Houston, Commissioner." I will ask you to state whether or not the same man wrote Robert Armstrong on this Hiawassee Purchase Map that wrote Robert Armstrong on this 1821 map?

Mr. MATTHEWS: I object to that for the same reason that I gave to the previous question.

A. If it is he was using a different pen altogether.

R. D. 160. Now look at this so-called Hiawassee Purchase Map, and tell us whether it purports to lay down the line between North Carolina and Tennessee at any point?

A. No.

R. D. 161. What is this red line running from "small Tennessee River across the Hiawassee River near to Hiawassee old town?"

A. That purports to be the South boundary line of the Hiawassee cession by the Cherokee Indians to the Government.

R. D. 162. And the line that was afterwards known as the one between the Hiawassee and the Ocoee Land Districts in Tennessee?

A. Yes.

R. D. 163. Have you had any experience in surveying out that line between the Ocoee and Hiawassee Districts?

A. Yes.

1771 R. D. 164. How did you find it?

A. I found it very hard to locate. Some parts I have never been able to locate to my satisfaction. That is another sketch map and the sketching on it is very inaccurate. That is another map that is misleading.

R. D. 165. Why?

A. It don't properly represent the lines where I know that it is marked. As a curiosity that might have some value. As a map it is worth just about as much as this map of 1821.

1772 R. D. 166. I notice South of this line between the Hiawassee purchase and what was afterwards the Ocoee District, in so far as it lay in Tennessee, a range of mountains which is marked "Great Unaka Mountain," which appears to run from the Hiawassee River to the small Tennessee River. I will ask you if that range of mountains is correctly located on that map?

A. No.

R. D. 167. Anything in the neighborhood of where that mountain lies?

A. No.

And further this deponent saith not.

W. D. HALE.

Sworn to before me Dec. 2nd 1910.

S. E. CLEAGE,
Supreme Court Clerk.

(Exhibit No. 2 to deposition of W. D. Hale is a block of wood exhibited in response to Q. 72 ex. in chief.)

1773 EXHIBIT NO. 3 TO DEPOSITION OF W. D. HALE.

Grant No. 4692.

THE STATE OF TENNESSEE:

To all to whom these presents shall come, Greeting:

Know ye that in consideration of an entry made in the Entry Taker's office of the Hiwassee District of No. 6635 dated 1st day of September 1849, by Jessee H. Parsons, as General enterer:

There is granted by the said State of Tennessee to the said Jessee H. Parsons and his heirs a certain tract or parcel of land containing Five Thousand acres lying in the County of Blount in said District. Beginning at a stake on the bank of the river, where the Unicoy Mountain crosses said river, thence with the meanders of said Mountain or State line, between North Carolina and Tennessee, N. 20 E. 43 chains, N. 62 E. 18 chains, N. 13 W. 12 ch. N. 5 & 1/2 E. 25 ch. No. 40 W. 14 ch., N. 5 & 1/2 26 ch., N. 14 W. 19 ch., N. 61 & 1/2 W. 23 ch., N. 2 & 1/2 W. 34 ch., N. 36 & 3/4 E. 21 ch., N. 49 & 1/2 E. 24 ch., N. 30 & 1/2 E. 24 ch., N. 56 E. 18 ch., N. 72 E. 49 ch., N. 81 E. 12 ch., S. 64 & 1/2 E. 8 ch., N. 59 & 1/2 E. 16 ch., N. 80 & 1/2 E. 14 (ch.?) N. 38 & 1/2 E. 7 (17) N. 65 & 1/2 E. 10 ch., East 12 chains, S. 74 E. 30 ch., N. 60 & 1/2 E. 12 ch., S. 82 & 1/2 E. E. 14 ch., N. 49 E. 42 ch. to a stake corner of this 5,000 acre entry, thence with the same N. 32 W. 560 ch. to a stake, corner of his 2,500 acre entry, thence with the same S. 30 W. 3,444 ch. to a stake on the river bank, thence up said river with the meanders thereof to the beginning corner of said first mentioned tract, with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances, to the said Jessee H. Parsons and his heirs forever.

In witness — Wm. B. Campbell Governor of the State of Tennessee hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 16th. January in the year of our Lord One thousand Eight hundred and fifty two and of American Independence the 76th.

By the Governor.

WM. B. CAMPBELL.

W. B. A. RAMSEY, *Secretary.*

1774 Jessee H. Parsons hath title to the above described land.

JAS. S. BRIDGES,
Register, H. D.

I, W. P. Chambers Register of the Hiwassee District do hereby certify that the foregoing is a true and perfect copy of a grant found of record in my office in Book "C" of grants on page 103.

This Dec'r. 7th 1885.

W. P. CHAMBERS.
Register, Hiwassee District.

End of Exhibit No. 3 to deposition of W. D. Hale.

1775 EXHIBIT No. 4 TO DEPOSITION OF W. D. HALE.

No. 8970.

THE STATE OF TENNESSEE:

To all to whom these presence shall come, Greeting:

Know Ye, that in consideration of an entry made in the County Surveyor's — of Monroe County Tennessee July 28th 1883 and an entry made in the Entry Taker's office of the Ocoee District of number 9613 dated April 29th 1892 in conformity with an act passed by the Legislature of said State *passed* Feb'y 25th 1852, to A. M. McCroskey, & T. E. H. McCroskey a certain tract or parcel of Land, containing five thousand (5,000) acres more or less lying in Monroe County in said District beginning at the mouth of Slick Rock Creek where it empties into Tennessee River thence up the said Slick Rock Creek with the line of the White & Bearden land to the point where the said White and Bearden line leaves the Creek thence following the White & Bearden line to where it intersects the North Carolina line to the Tennessee River thence down the Tennessee River to the beginning—

With its heriditaments and appurtenances. To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said H. M. & T. E. H. McCroskey and their heirs forever.

In Witness Whereof, John P. Buckanan Governor of the State of Tennessee hath hereunto set his hand, and caused the Great Seal of the State to be affixed at Nashville on the 14 day of May in the year of our Lord 1892 and of the Independence of the United States the one hundred & sixteenth.

By the Governor.

JOHN P. BUCKANAN.

C. A. MILLER. *Secretary.*

H. M. McCroskey & T. E. H. McCroskey hath title to the above described land—

A. J. WHITE.
Register of the Ocoee District.

1776 Recorded in office of Register of the Ocoee District in Book P—page 2446, on this the 16th day of May 1892.

A. J. WHITE.

I, W. R. Dethero Register of the Ocoee District hereby certify that the foregoing is a full, true and perfect copy of grant number 8970 from the State of Tennessee to H. M. and T. E. H. McCroskey as appears of record in my office in Book P—page 244.

Witness my hand this 5th day of December 1908.

W. R. DETHERO,
Entry Taker and Register of the Ocoee District.
By ED MAYFIELD, *Deputy.*

End of Exhibit No. 4 to deposition of W. D. Hale.

1777 EXHIBIT No. 5 TO DEPOSITION OF W. D. HALE.

No. 11091.

THE STATE OF TENNESSEE:

To all to Whom these Presents Shall Come, Greeting:

Know Ye, That in consideration of an entry made in the Entry Taker's Office of Blount & Monroe Counties of No. 1755, dated the 27th day of September 1883, By Samuel J. Griffitts & John H. Morton There is granted by the State of Tennessee unto the said Samuel J. Griffitts & John H. Morton and their heirs a certain tract of land containing 11,500 acres lying and being in the County aforesaid.

Beginning at Signal Cedar on State line of North Carolina & Tennessee, bordering Monroe Co, Tenn. Thence with the State line of North Carolina & Tennessee N. 14½ E. 81 chains Hangover rock, N. 31 W. 60 chains to brow above Zipharris Hill, N. 36 W. 75 chains to flat or birch below Z. Hill N. 20 E. 10 chains to a Bluff & Rock marked X N. 54 W. 21 chs. to Little Cliff, N. 19 W. 21 chs. to spotted oak by cliff. N. 36½ W. 11 chs. to Chestnut by Maple, N. 32 W. 16 chs. *chs.* in open place, N. 14 E. 20 chs. to chestnut on brow, N. 9 W. 35 chs. to a bare place near chestnut, N. 22 W. 20 chs. to 3 chestnuts, N. 23 E. 23 chs. to a spar on ridge, N. 14½ E. 8½ chs. to Span. oak N. 36 E. 13 chs. to brow of ridge, N. 13½ E. 8 chs. to Bear Pen Gap N. 20 W. 56 chs. to High top Totoe Hill, N. 60 E. 16 chs. to Hickory, N. 53 E. 18 chs. to lop on ridge. N. 8 chs. to lop to top chestnut N. 36 W. 15½ chs. to a basin in high top of ridge to locust N. 54½ E. 18 chs. to Spanish oak, N. 14 E. 15 chs. near a locust, N. 42 E. 12 chs. to a crooked chestnut, N. 12½ E. 10 chs. to hickory, N. 41 E. 28½ chs. to two chestnuts, N. 17 E. 22 chs. to chestnut & Hickory, N. 11 W. 10 chs. to a small flat, N. 24½ E. 8 chs. to a high top N. 52 W. 8½ chs. to white oak sappling. N. 22 E. 4½ chs. to hickory & pine on bench, N. 14 E. 22 chs. to chestnut on brow, N. 8 E. 12 chs. to hickory, N. 8½ E. 30 chs. to white oak. N. 34 E. 25½ chs. to Spanish oak, N. 25 E. 12 chs. to large white oak, N. 1 E. 53 chs. to Black Oak and Pine crossing N. 38 E. 10
1778 chs. to pine N. 8 chs. to Post oak N. 29½ E. 14 chs. to Black oak in Gap. N. 37 W. 9 chs. to Pine N. 24 E. 17

chs. passing Lee G. Camp on W. to stone, N. 82 E. 4½ chs. to White oak dead N. 39½ E. 8 chs. to white oak N. 30 W. 22 chs. to Black oak N. 20 E. 8 chs. to Black oak, N. 4½ E. 20 chs. to Black oak N. 32 E. 144 crossing Tennessee River to stake on bank about N. 40 W. about 155 chs. along Peck's or Parsons' line across Tennessee river, thence S. 70 W. 5 chs. to stake on S. W. side of Tennessee river S. 10 E. 94 chs. to stake near river S. 63½ E. 10 chs. to Bearden's corner at Mouth S. Rock creek, thence with Bearden's line through entire Township of 2 N. Range six E. S. 45 W. about 960 chs. to a stake at intersection of Township 2 N. & 1 S. at said range, Six E. with said line dividing 2 N. & 1 S. thence W. 480 chs. to a stake at N. W. corner of Section 3 & N. E. cor. of Section 4 of Township 1 S. S. 320 chs. to stake at N. E. corner of Section 16, E. 320 chs. to stake at N. E. corner of Section 14 & N. W. corner of fractional section 135, 160 chs. to State line of North Carolina and Tennessee, thence with the State line beginning, thence about N. 80 E. 390 chs. to high top East of Bald: E. 160 chs. to Brow of ridge, N. 35 E. 160 chs. to deep Gap N. 85 E. 160 chs. to the beginning.

Surveyed the 19th day of August 1885, with its appurtenences, to have and to hold the said Tract or Parcel of Land with its appurtenances, to the said Samuel J. Griffitts and John H. Morton and their heirs and assigns forever.

In Witness Whereof, Wm. B. Bate Governor of said State of Tennessee has hereunto set his hand, and caused the great seal of the State to be affixed, at Nashville, on the 11th day of January, in the year of our Lord one thousand eight hundred and Eighty six and of American Independence the 110th.

By the Governor:

[SEAL.] WM. B. BATE.

JOHN ALLISON,
Secretary of State.

1779 STATE OF TENNESSEE:

I, W. T. Jones, Register for the Land Office of East Tennessee, do hereby certify that the within is a true and correct copy of Grant No. 41091 from the State of Tennessee to Sam'l J. Griffitts & J. H. Morton as the same appears of record in my office in vol. 33 at page 276 Records Land Office for East Tennessee, at Knoxville.

W. T. JONES,
Register Land Office for East Tennessee.
By —— ——, *D. Reg.*

(Endorsed:) No. 41091. Grant from the State of Tennessee to S. J. Griffitts & J. H. Morton. Register's fee Two Dollars paid. W. T. Jones, Reg. L. O. E. T.

1780 EXHIBIT NO. 7 TO DEPOSITION OF W. D. HALE.

Transcript of the Record from the Chancery Court of Monroe County, Tennessee, in the Case of

GEORGE PEABODY WETMORE et al.
vs.
JACK STILES et al.

Original Bill.

Filed January 16th, 1895. Vastine Stickley, C. & M.

GEORGE PEABODY WETMORE, of Rhode Island, and HUGH STEVENSON, Paul E. Stevenson, Eloise Stevenson Kernochan and Her Husband, James L. Kernochan; Matilda Stevenson Alloway, Maxwell Stevenson, Who is a Minor and Sues by Paul E. Stevenson, His Next Friend, All of New York,

vs.

JACK STILES, ED (ALECK) HARE, and GEORGE BURCHFIELD, All Residents of Monroe County, Tennessee.

To the Honorable T. M. McConnell, chancellor, etc., holding the Chancery Court for Monroe County, at Madisonville, Tennessee:

Complainants respectfully show to the court that they are the owners in fee by direct chain of title from the original grantee from the State of Tennessee, on entry made in the year 1842, of the following described land, to-wit:

First. On the waters of Tellico River, bounded by the divide between the waters of the Tellico River and on the south and the east the waters of Beaver Dam, Hanging Dog and Snowbird
1781 Creeks, on the north the waters of Citico Creek, and bounded on the west by the Ocoee district line, further described as follows:

Second. In fractional township 1, south range 6 east, section 29, section 30, section 31, section 32, section 33, section 34, and section 35.

Third. In fractional township 2 south, range 6 east, section 6, all of section 7, except the northeast quarter, section 18, section 19, section 29, section 30, section 31 and section 32.

Fourth. In fractional township 3 south, range 6 east, west half of section 5, section 6, section 7, and section 8.

Fifth. In fractional township 3 south, *north* range 5 east, section 1 and section 2, south half of section 3, east half of section 4, east half of section 9, and section 10, section 11, section 12, section 13, section 14, section 15, section 21, section 22, section 23, section 24, section 25, section 26, section 27, and section 34, and section 36.

Complainants respectfully show unto your Honor that they had a tenant occupying portions of said land, and that by some wrongful

collusion with the tenant or wantonly and unlawfully the three d
fendants above named went on said land, and are now holding th
same under some sort of occupation, either by means of cabins bui
for timber camps or other purposes and are preparing and intendin
to cut and waste timber on said lands, and that they are unlawfull
holding possession and occupying the same.

Complainants show that the value of the lands depends, so far a
is known, in the timber upon it, and that if defendants are allowe
to go on cutting timber upon it, whether it be for fencing for moun
tain fields, which are not worth cultivating more than two or thre
years, or for shipping tanbark or attempting to get off during th
winter storms by floating some of the logs thus injuring complain
ant's land, the loss to complainants would be irreparable and withou
hope of the slightest redress. Complainants are informed that sai
defendants are absolutely execution proof; that they have no prop
erty from which redress for the injury could be obtained, an
1782 that defendants are preparing to camp out in the mountai
intending and preparing to commit irreparable injury t
the land.

The premises considered, complainants pray:

1st. That by due process the said defendants be required to ap
pear and answer this bill, but not under oath, which is expressl
waived.

2nd. That whatever claims of any description said defendants
or any of them, may set up to said land, be declared null and void
and the title to said lands adjudicated, and all adverse claims for
ever canceled as clouds on the title of complainants and the injunc
tion herein prayed be made perpetual.

3rd. That writ of possession be issued and all such other proces
as may be necessary to give complainants immediate possession an
full protection in the peaceable enjoyment of their lands.

That in the meantime writ of injunction be granted, strictly
inhibiting and enjoining the said defendants, and each of them
from cutting any trees or in any way injuring any timber whatever
on said property, or attempting to change the nature of land by
clearing or interfering in any manner with the use of said land by
complainants.

And the complainants pray for such further, other and genera
relief as their circumstances may require, and shall to the court seem
meet.

This if the first application for writ of injunction in this cause
And your orators will ever pray.

CHARLES SEYMOUR, *Solicitor.*

STATE OF TENNESSEE,
County of Knox:

Personally appeared before me, a notary public in and for said
county, Charles Seymour, and who having been duly sworn, de
clared on oath that he is the solicitor of the complainants in the fore

going bill, and that the statements therein made are true to the best of his knowledge, information and belief.

CHARLES SEYMOUR.

1783 Sworn to and subscribed before me, this 15th day of January, A. D. 1895.

Witness my hand and official seal on this date.

WM. KNABE,
Notary Public, Knox County, Tenn.

To the Clerk & Master of the Chancery Court at Madisonville:

Issue a writ of injunction as prayed in the foregoing bill on complainants giving bond and security in the sum of five hundred dollars, conditioned as required by law.

JOS. W. SNEED, *Judge.*

This January 15th, 1895.

STATE OF TENNESSEE:

Chancery Court at Madisonville.

Know all men by these presents, that we, George Peabody Wetmore, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson Kernochan, James L. Kernochan, Matilda Stevenson Alloway, principals, and Charles Seymour, surety, are held and firmly bound unto Jack Stiles, Ed (Aleck) Hare and George Burchfield, in the penal sum of two hundred and fifty dollars, to be void on condition that complainants prosecute and effect a suit which they are about *the* commence in said court against Jack Stiles, Ed (Aleck) Hare and George Burchfield, or pay all costs and damages, incident on failure thereof, or which may be adjudged against us.

GEORGE PEABODY WETMORE.
HUGH STEVENSON.
PAUL E. STEVENSON.
M. C. ALLOWAY.
JAMES L. KERNOCHAN.
ELOISE S. KERNOCHAN.
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR.

1784 *Injunction Bond.*

Chancery Court at Madisonville.

Know all men by these presents, that we, George Peabody Wetmore, Hugh Stevenson, Paul E. Stevenson, Matilda C. Alloway, James L. Kernochan, Eloise S. Kernochan, are held and firmly bound unto Jack Stiles, Ed (Aleck) Hare, George Burchfield, the defendants, in the penal sum of five hundred dollars, for the pay-

ment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators, jointly and severally.

Witness our hands and seals, this — day of January, 1895.

The condition of the above obligation is such, that whereas, the above bound G. P. Wetmore and Stevenson heirs, hath filed this day in the Chancery Court for Monroe County, an original and injunction bill and hath obtained from the Honorable Jos. W. Sneed, one of the Judges of the Circuit Courts for the State of Tennessee, a fiat for a writ of injunction. Now, if the said G. P. Wetmore and Stevenson heirs shall prosecute said bill for possession to clear title and for injunction with effect, or in case they shall fail therein, or the same be dismissed shall abide by, perform and fulfill the judgment or decree of said court and pay all costs and damages that may be sustained from wrongfully suing out said writ of injunction, then the above obligation to be void, otherwise to remain in full force and effect.

GEORGE PEABODY WETMORE.
HUGH STEVENSON.
M. C. ALLOWAY.
PAUL E. STEVENSON.
JAMES L. KERNOCHAN.
ELOISE S. KERNOCHAN.
By CHARLES SEYMOUR, *Atty.*
CHARLES SEYMOUR.

1785 MONDAY, *June 3rd*, 1895.

STATE OF TENNESSEE:

Be it remembered, that at a regular term of the Chancery Court for Monroe County, begun and held at the court house in Madisonville, Tennessee, on the first Monday in June, 1895, present and presiding Hon. T. M. McConnell, Chancellor of the third chancery division, the following proceedings were had:

CHARLES P. WETMORE et al.
vs.
JACK STILES et al.

In this cause, it appearing that the defendants, Jack Stiles, Ed (Aleck) Hare and George Burchfield, have been duly served with process more than five days before the present term and that said defendants have failed to make defense to said bill, it is ordered by the court that judgment pro confesso be and the same is hereby taken and the cause as to them set for hearing exparte.

And thereupon the cause came on to be heard on this 6th day of June, 1895, upon the original bill and judgment proconfesso, from all of which it appears that complainants are the owners in fee of all the lands on waters of the Tellico River, bounded by the divide between the waters of Tellico River, and on the south and east by

Hanging Dog, Beaver Dam and Snow Bird Creeks, on the north by the waters of Citico Creek and on west by Ocoee district line, being all lands in 7th range east, Ocoee District, except section 31; also sections 29, 30, 31, 32, 33, 34, 35, 1st fract. township, south range east Ocoee District; also sections 6, all of section 7, except northeast quarter, sections 18, 19, 29, 30, 31, 32, 2nd fract. township south range 6 east, Ocoee district.

Also west ½ section 5, sections 6, 7, 8, 3rd fract. township, south range 6 east Ocoee District.

Also sections 1-2 south ½ section 3, east ½ section 4, east ½ section 9, sections 10, 11, 12, 13, 14, 15, 21, 22, 23 24, 25, 26, 27, 34, 35, 3rd fract. township, north range 5 east Ocoee district.

1786 And it appearing that the defendants have wrongfully and without authority trespassed upon said lands by erecting cabins, clearing land and cutting and destroying valuable timber, and that they are now trespassing thereon: It is therefore ordered, adjudged and decreed that complainants have and recover of the defendants the lands above described, and the possession of the same, and to that end that a writ of possession of same and the injunction heretofore granted in the cause, enjoining the defendants from trespassing on said land by cutting timber, clearing land or interfering with the use of said land by complainants be made perpetual.

Respondents will pay the cost of the cause in the first instance with judgment over against complainants for the costs of the cause, and execution awarded in the event execution against defendants is returned nulla bona.

STATE OF TENNESSEE,
Monroe County:

I, Vastine Stickley, Clerk & Master of the Chancery Court for Monroe County, Tennessee, certify that the foregoing is a full and perfect copy of the final decree in the above styled cause, made at the June Term, 1895, and entered of record No. 3, page 165.

Given under my hand and seal of court, this September 10th, 1895.

VASTINE STICKLEY, *C. & M.*

Subpoena to Answer.

STATE OF TENNESSEE:

Chancery Court of Madisonville.

To the Sheriff of Monroe County, Greeting:

Summon Jack Stiles, Ed (Aleck) Hare and George Burchfield, appear on the first Monday of June next, before the chancery court at Madisonville, to answer the bill of George P. Wetmore and others,

filed against Jack Stiles and others in said court; and have you then and there this writ.

1787 Witness Vastine Stickley, clerk and master of our said court at office in Madisonville, the 16th day of January, 1895.

VASTINE STICKLEY,
Clerk & Master.

Endorsed: Executed by reading copy of original bill to each of the defendants, and left copy of bill with George Burchfield and summoning them to appear as commanded. This March 29th, 1895. $3.00. J. H. Melton, dep'ty sheriff.

Injunction.

State of Tennessee to Jack Stiles, Ed (Aleck) Hare, and George Burchfield and to their counsellors, attorneys, solicitors, and agents and each and every one of them, Greeting:

Whereas, in a certain suit this day instituted in our court of chancery at Madisonville, by George P. Wetmore and others, complainants, against Jack Stiles, Ed (Aleck) Hare and George Burchfield, defendants, complainants having obtained from the Hon. Joseph W. Sneed, judge, etc., a fiat for a writ of injunction to issue to enjoin said defendants and each of them from cutting any trees, or in any way injuring any timber whatever on said land or property or attempting to change the nature of land by clearing or interfering in any manner with the use of said land by complainants.

And complainants having executed the bond required by said fiat, we therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said Jack Stiles, Ed (Aleck) Hare and George Burchfield, and all and every persons before mentioned, under the penalty prescribed by law, of you and every your goods, lands and tenements, to be levied on to our use, that you and every of you do absolutely desist from cutting any trees, or in any way injuring any timber, whatever, on said property, or attempting to change the nature of land by clearing or interfering in any manner with the use of said land until the hearing of this cause in our said court of chancery.

1788 Witness, Vastine Stickley, clerk and master of our said court, at office, the first Monday in December, in the year of our Lord, 1895, and in the —— year of our Independence.

VASTINE STICKLEY, *C. & M.*

Endorsed: Came to hand January 21st, 1895. Executed as commanded in full by reading the within injunction to each of the defendants. This March 29th, 1895.

J. M. MELTON, *D. S.*

Cost $5.00.

STATE OF TENNESSEE,
Monroe County:

I, Vastine Stickley, clerk and master of the Chancery Court for Monroe County, at Madisonville, Tennessee, do hereby certify that the foregoing is a full, true and perfect copy of the entire proceeding in the case of George Peabody Wetmore and others vs. Jack Stiles et al., as appears of record in said court.

Given under my hand and the seal of said court at office in Madisonville, Tennessee, this the 16th day of March, 1901.

VASTINE STICKLEY,
Clerk & Master.

End of Exhibit No. 7 to deposition of W. D. Hale.

1789 EXHIBIT NO. 8 TO THE DEPOSITION OF W. D. HALE.

Transcript of the record in the cause of V. K. Stevenson et al. vs. Tip Lovingood et al. in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee and copied by agreement from the printed record in the case of Stevenson vs. Fain, said copy to have all the force and effect of a duly certified copy of said record, subject to exception only for competency in this cause, and which said copy is filed as Exhibit No. to the Deposition of W. D. Hale.

Transcript of cause of V. K. Stevenson et al. vs. Tip Lovingood et al.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

VERNON K. STEVENSON, MATILDA C. ALLOWAY, and Her Husband Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, the Last Four of Whom are Minors and Sue by Their Next Friend Hugh Stevenson, and Anna L. Stevenson, Widow of Vernon K. Stevenson, all Citizens and Residents of the City and State of New York, and George Peabody Wetmore, a Citizen and Resident of the State of Rhode Island.

vs.

TIP LOVINGOOD, KI WOODY, COLUMBUS HOSS, JASPER FAIN, and WM. M. MARR, all Citizens and Residents of the County of Monroe, State of Tennessee, and Wm. M. Nixon, a Resident of Hamilton County, Tennessee.

The said plaintiffs sue the said defendants to recover the following described land:

Situate in Monroe County in the State of Tennessee and
1790 in the Northern Division of the Eastern District of Tennessee. Those certain tracts of land in Monroe County, State of Tennessee and in that part of said county which is included in the Ocoee District, and which lands are described on the map of

said District on file in the Entry taker's Office of said District, at Cleveland, Tenn. and described as follows:

All the lands in fractional township 2, and range 7 east of the basis line in the Ocoee District and granted in the Register's Office of said District by Nos. 5603, 5604, and 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7,114 acres.

Sec. 33 granted by 6136 southeast and southwest quarters of section 34, by grant 6135, northeast and northwest fractional quarters of section 34 by grant 5602, southwest quarter of section 35, by grant 5975 and east half of the southeast quarter of section 32 by grant 5977, which lands are in fractional township 1, north and range 6 east etc. containing 1,433 acres. Section 3, section 5, and southeast quarter and northeast fractional quarter of section 6 by grants 6131, 6132, and 6135, which lands are in fractional township 2 north and range 6 east etc. of the basis line in the Ocoee District and containing 1,500 acres. East half of the southwest, northwest, northeast and southeast quarters of section 7 by grant 5987, east half of the northwest and south half and northeast corner of the southwest quarter of section 18, by grant 6146, northeast & southeast quarters of section 18 by grant 6145, section 17 by grant 6147, section 30 by grant 6146, section 32 by grant 6114, section 29, by grant 6117, section 31 by grant 6115, which are in fractional township 1 south and range 6 east of the basis line in said district containing 4,280 acres. Section 6, by grant 6160, northwest, southwest and southeast quarters of section 7 by grant 6164 northeast, south east and southwest quarters of section 18 by grant 6104, section 19 by grant 6103, section 30 by grant 5993, and section 31 by grant 5992, which lands are in fractional township 2 south and range 6 east of the basis line in said district, containing 3,520 acres. Section 6 by grant
1791 6152 northeast fractional and southwest quarters of section 7 by grant 6154, northwest quarter and the southwest fractional quarter of section 6 by grant 6153 which are in fractional township 3 south and range 6 east of the basis line in said District and containing 1,142 acres. Section 15 by grant 5932, section 22 by grant 5933, northwest quarter of section 26 by grant 5967 northwest quarter of section 35, by grant 5974 and northeast quarter of section 21 by grant 5924 which lands are in fractional township 3 north and range 5 east of the basis line in said district containing 1,760 acres. Section 15 by grant 5985 (or 5588) section 16 by grant 5952, northeast and northwest quarters of section 22 by grant 5954, southeast and southwest quarters of section 29 by grant 5946 northeast quarter of section 21 by grant 5941, northeast west half of southeast and northwest quarter of section 10 by grant 5939, southwest quarter of section 21 by grant 5089, section 28 by grant 5953 and 5584, southwest quarter of section 10 by grant 5947, east of the northeast quarter of section 29 by grant 5588 southeast quarter of section 8 by grant 5943 and southeast quarter of section 17, by grant 5473, which lands are in fractional township 1 north and range 4 east of the basis line in said district containing 4,400 acres which in the aggregate contain twenty five thousand two hundred and forty nine acres, being the same lands conveyed to W. M. Wetmore by deed from

Francis W. Lea registered in the Register's office of Monroe County, Tennessee, pages 257 & 258 of Book O.

Also one undivided moiety of the following several tracts or parcels of land situate in said Monroe County, Tenn. in said district of Ocoee granted and conveyed to W. M. Wetmore by grants from the State of Tennessee described as follows viz:

By grant 7941, a tract containing 1,885 acres situated in the 5th range east of the basis line fractional township 1 south and 1st, 12th, 2nd & 3rd sections being the fractional sections one and three northeast and northwest quarter of section two and the southeast and southwest fractional quarters of 2nd sections beginning at the northeast corner of said quarter. By grant 7932 a tract containing 618 acres situated in the 6th range east of the basis line fractional
1792 township 1 north and 25, 36, 26, & 35th sections, being the northeast fractional of section 36, southeast and northwest fractional quarter of section 25, northeast and southwest fractional quarter of section 26, and northwest quarter of 35th section beginning at the northeast corner of said quarter.

By grant 7953 a tract containing 640 acres situate in the 4th range west of the basis line fractional township 1 north and 1st & 12th sections being the northeast and northwest quarters of 12th southwest of the 1st north halves of the southeast and southwest quarters of the 12th sections beginning at the northeast corner of said quarter. By grant 7934 a tract containing 160 acres situate in the 4th range east of the basis line fractional township 1 north and 17th section being the northeast quarter of said section beginning at the northeast corner of said quarter. By grant 7935 a tract containing 640 acres situate in the 6th range east of the basis line fractional township 2 north and 4th section being the northeast northwest southeast and southwest quarters of said sections, beginning at the northeast corner of said quarter. By grant 7936 a tract containing 160 acres situate in the 6th range east of the basis line fractional township 2 north of the 6th section being the southeast quarter of said section beginning at the northwest corner of said quarter. By grant 7937 a tract containing 640 acres situate in the 5th range east of the basis line fractional township 1, south and 31st & 32nd sections, being the northeast and southeast of the 31st and northwest and southwest quarters of the 32nd section beginning at the northeast corner of said quarter. By grant 7942 containing 1,280 acres situate in 6th range east of the basis line fractional township 2 south and 29 and 32 section being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner of said quarter. Also one undivided moiety of the following tracts or parcels of land situate in said county of Monroe State of Tennessee viz:

The northeast, southeast, northwest and southwest quarters of section one and 12, in the third, fractional township north in
1793 range 5 east of the basis line in the Ocoee District being the land embraced in grant 6725 from the State of Tennessee estimated to contain 1,280 acres more or less. Also the southeast northeast southwest and northwest quarters of sections eleven and

two in the 3rd fractional township north range 5 east of the basis line in the Ocoee District being the land embraced in grant No. 6726 from the State of Tennessee estimated to contain 1,280 acres more or less. Also the northeast and southeast northwest and southwest quarters of section- 13 & 14 in the 3rd fractional township north in range 5 east of the basis line in the Ocoee District being the land embraced in Grant 6727 and estimated to contain 1,280 acres more or less. Also the northeast southeast north west and southwest quarters of sections 24 & 25 in the third fractional township north in range 5 east of the basis line in the Ocoee District being the land embraced in Grant No. 6728 estimated to contain 1,280 (twelve hundred and eight-) acres. Also the northeast northwest southeast and southwest quarters of section 25, and the southeast and southwest quarters of section twenty six in third fractional township north in range five east of the basis line in the Ocoee District being the land embraced in Grant 6729 estimated to contain eleven hundred and twenty (1,120) acres. Also the northeast southeast northwest and southwest quarters of section twenty seven and the southeast northwest and southwest fractional quarters of section twenty one, in the third fractional township north, range five, east of the basis line in the Ocoee District being the land embraced in grant No. 6730 and estimated to contain nine hundred and ninety three (993) acres more or less. Also the northeast northwest southeast and southwest quarters of section thirty six, and the northeast southwest and southeast quarters of section thirty five, in the third fractional township north in range 5 east of the basis line in the Ocoee District being the land embraced in Grant No. 6731 estimated to contain eleven hundred and twenty (1,120) acres more or less. Also the northeast, northwest, southeast and southwest quarters of section 34, in the third fractional township north in range five east of the basis line in the Ocoee District, being the land embraced in Grant No. 6732 and containing six hundred and
1794 forty (640) acres more or less. Also the southeast and southwest quarters of section three and northwest northeast southeast and southwest quarters of section ten in the third fractional township north in range five, east of the basis line in the Ocoee District, being the land described in Grant No. 6733 and estimated to contain 980 acres more or less. Also the northeast, and southeast fractional quarters of section 9 in the third fractional township north in range 5 east of the basis line in Ocoee District being the same land contained in Grant No. 6734 and estimated to contain 399 acres more or less. Also the southwest fractional quarters of section 28, northwest of the same, southeast fractional quarter of section sixteen, southwest fractional quarter of section 21, northeast of the same, northwest fractional quarter of section- eleven, and fifteen, southeast fractional quarter- of section ten, and northwest and southwest fractional quarter- of section 32 in the 1st fractional township north range 3rd, east of the basis line in the Ocoee District being the same land embraced in grant No. 6735 and estimated to contain five hundred and fifty two (552) acres more or less, and containing in the aggregate forty two thousand one hundred and 96 acres be

the same more or less, and being the same lands described in deed executed by Moses W. Wetmore to W. S. Wetmore Feby. 14th 1853 and registered in the Register's office of Monroe County, Tenn. Book O, pages 534-535-536-537 & 538 of which lands which are worth more than five thousand dollars, they were possessed claiming in fee before the commencement of this suit and after such possession accrued the defendants on the first day of January 1888 entered thereon and unlawfully withhold and defend the same together with five thousand dollars due for the detention thereof.

CHAS. SEYMOUR,
ANDREWS & THORNBURGH,
Att'ys for Pl'ff.

Filed Jan. 13, 1899. H. H. Taylor, Clerk.

UNITED STATES OF AMERICA,
Eastern Dist. of Tennessee, ss:

1795 The United States of America to Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr and W. M. Nixon, Greeting:

We command you and every one of you to appear before our Judge of our Circuit Court of the United States of America for the Eastern District of Tennessee at Knoxville on the fifth day of August next that being the rule day, to which this writ of subpœna is returnable, to answer to the bill of complaint of Vernon K. Stevenson et al. vs. yourselves this day filed in the Clerk's office of said Court in said City of Knoxville then and there to receive and abide by such judgment and decree as then shall or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District, to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America at Knoxville aforesaid, this 13th day of July in the Year of our Lord one thousand eight hundred and eighty nine and of our Independence 111.

H. H. TAYLOR, *Clerk.*

Memorandum.

The above named defendants are hereby notified that unless they enter their appearance in the Clerk's office of said court at Knoxville aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and decree entered accordingly.

[SEAL OF THE COURT.] H. H. TAYLOR, *Clerk.*

[Endorsed:] No. 864. Circuit Court of the United States—Eastern District of Tennessee. Vernon K. Stevenson vs. Tip Lovingood et al. Chancery Subpœna. Returnable to rule day fifth in Aug. A. D. 1889. H. H. Taylor, Clerk. Issued July 13th A. D. 1889. H. H. Taylor, Clerk. Monroe County. Jasper Fain not found.

1796 UNITED STATES OF AMERICA.
Eastern District of Tennessee, ss:

The United States of America to Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, and W. M. Nixon, Greeting:

We command you and every one of you to appear before our judge of our Circuit Court of the United States of America for the eastern district of Tennessee at Knoxville on the 5th day of August next that being the rule day, to which this writ of subpœna is returnable, to answer to the bill of complaint of Vernon K. Stevenson et al. vs. yourselves, this day filed in the Clerk's office of said court, in said city of Knoxville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District to execute.

Witness the Hon. Melville W. Fuller Chief Justice of the Supreme Court of the United States of America at Knoxville aforesaid this 13th day of July in the year of our Lord One thousand eight hundred and eighty nine and of our Independence 114.

H. H. TAYLOR, *Clerk.*

Memorandum.

The above named defendants are hereby notified that unless they enter their appearance in the Clerk's office of said court at Knoxville aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and the decree entered accordingly.

[SEAL OF THE COURT.] H. H. TAYLOR, *Clerk.*

[Endorsed:] No. 864 Circuit Court of the United States. Eastern District of Tennessee. Vernon K. Stevenson vs. Tip Lovingood et al.—Chancery Subpœna—returnable to rule day fifth in Aug. A. D. 1889. H. H. Taylor, Clerk. Issued July 13th, A. D. 1889. H. H. Taylor, Clerk. Hamilton County.

1797 Came to hand July 14 89 executed in Hamilton County at Chattanooga, on W. M. Nixon by delivering him copy of this writ and copy of the bill.

This 15th day of July 1889.

C. J. DUFF,
Dep. U. S. M.

Came to hand July 29, 1889 and executed by summoning Tip Lovingood, Ki Woody, C. Hoss, W. Marr, and delivering copy of bill to each. Monroe County. Jasper Fain not to be found in the east dist. of Tenn.

WESLEY GILES,
D. U. M. S.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

Disclaimer.

And now comes the defendants W. M. Nixon and W. W. Marr by their attorneys and by way of disclaimer say: that they are not and have not been in possession of the lands in the plaintiff's declaration mentioned or of any part thereof, and that they disclaim all right title or interest therein, or in any part of said lands and this they are ready to verify &c.

WILLIAM NIXON,
W. W. MARR,
By PRITCHARD, *Att'y.*

Endorsed: Filed Sep. 2, 1889. H. H. Taylor, U. S. Cir. Ct. Clk.

Be it remembered by the Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee, at the Court House in the City of Knoxville within said District, and the 6th Circuit, on the second Monday it being the 14th day of July A. D. 1890.

Present and presiding the Hon. D. M. Key Judge etc., the following proceedings were had to-wit:

THURSDAY MORNING, *Nov.* 13, 1890.

Court met pursuant to adjournment present and presiding
1798 the Hon. D. M. Key judge etc.

No. 864.

VERNON K. STEVENSON et al.

TIP LOVINGOOD et al.

This cause is continued until the next term of the Court for want of counsel.

Be it remembered that at a Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee, at the Court House in the City of Knoxville within said district and the 6th circuit on the 2nd Monday it being the 13th day of July A. D. 1891.

Present and presiding the Hon. D. M. Key judge etc., the following proceedings were had to-wit:

MONDAY MORNING, *Nov.* 16, 1891.

Court met pursuant to adjournment, present and presiding the Hon. D. M. Key Judge, etc.

No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

This cause is continued until the next term of the court without terms.

Be it remembered that at a Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee, at the Court House in the City of Knoxville within the said District, and the 6th Circuit on the second Monday it being the 11th day of January A. D. 1892.

Present and presiding the Hon. D. M. Key judge etc., the following proceedings were had to-wit:

TUESDAY MORNING, *Jan.* 26, 1892.

1799 Court met pursuant to adjournment present and presiding the Hon. Judge etc.

In the U. S. Circuit Court, Eastern District of Tennessee, Northern Division.

No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

In this cause it duly appearing to the court that the defendants Tip Lovingood, Ki Woody, and Columbus Hoss have been regularly brought into court by service of subpœna on or before Aug. 3rd 1889, and have made no defense but are in default, it is ordered on motion of the complainants that as to the said defendants, the bill be taken for confessed, and the cause set for hearing ex parte. And it is further ordered in this cause on motion of the complainants that an alias subpœna issue as to the defendant Jasper Fain.

WEDNESDAY MORNING, *Jan.* 27, 1892.

Court met pursuant to adjournment present and presiding the Hon. D. M. Key judge of the United States District Court for the Eastern and Middle District of Tennessee.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

Cause No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

This cause came on to be heard this 27th day of Jan. A. D. 1892, before the Hon. D. M. Key, holding the Circuit Court for the Northern Division of the Eastern District of Tennessee at Knoxville, Tennessee, and it appearing to the satisfaction of the court that subpena was duly issued against Jasper Fain, one of the defendants in the above entitled cause, and that the Marshal for said District
1800 has returned that said Fain is not to be found in said District, it is ordered that said Fain be directed to appear plead answer or demur to the complainants' bill on or before the firs. day of March 1892 and that copy of this order be served on the said Jasper Fain if practicable wherever found, or if such personal service is not practicable, it shall be published for four consecutive weeks in the Madisonville Gazette a newspaper published at Madisonville in Monroe County, in said district.

And it is further ordered that in case said Fain does not appear within the time so limited the court upon proof of the service or publication of said order and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of above suit in the same manner, as if said Fain had been served with process in said district.

THURSDAY MORNING, *Feb.* 25, 1892.

Court met pursuant to adjournment, present and presiding the Hon. D. M. Key judge of the United Sates District Court for the Eastern and Middle Districts of Tennessee.

Court met pursuant to adjournment.

In the Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

Cause No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

In this cause it duly appearing to the court that further time should be granted for the service of process upon Jasper Fain one of the defendants it is ordered that the order made on the 27th of January be renewed and extended so that service of process and

publication may be made for appearance of the said defendants at the July Term of the court.

Be it remembered that at a Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee at the Federal Court rooms in the City of Knox-
1801 ville within said district and the 6th Circuit, on the second Monday it being the 11th day of January A. D. 1892.

Present and presiding the Hon. D. M. Key United States District Judge for the Eastern and Middle Districts of Tennessee.

The following proceedings were had to-wit:

WEDNESDAY MORNING, *Jan.* 27, 1892.

Court met pursuant to adjournment, present and presiding the Hon. D. M. Key judge of the United States District Court for the Eastern and Middle Districts of Tennessee.

In the Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

Cause No. 864.

VERNON K. STEVENSON et al

vs.

TIP LOVINGOOD et al.

This cause came on to be heard this 27th day of Jan. 1892 before the Hon. D. M. Key holding the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, at Knoxville, Tennessee, and it appearing to the satisfaction of the court that subpœna was duly issued against Jasper Fain one of the defendants in the above entitled cause, and that the Marshal of said district has returned that said Fain is not to be found in said district it is ordered that said Fain be directed to appear, plead answer or demur to the complainants' bill, on or before the first day of March 1892, and that a copy of this order be served on the said Jasper Fain if practicable wherever found or if such personal service is not practicable, shall be published for four consecutive weeks in the Madisonville Gazette a newspaper published at Madisonville in Monroe County in said district.

And it is further ordered that in case said Fain does not appear within the time so limited the court upon proof of the service or publication of said order and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of the above suit in the same man-
1802 ner as if the said Fain had been served with process in said district.

THURSDAY MORNING, *Feb.* 25, 1892.

Court met pursuant to adjournment, present, and presiding the Hon. D. M. Key judge of the United States District Court for the Eastern and Middle Districts of Tennessee.

In the Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

Cause No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

In this cause it duly appearing to the court that further time should be granted for the service of process on Jasper Fain one of the defendants it is ordered that the order made on the 27th of January be renewed and extended so that service of process and publication may be made for appearance of said defendant, at the July Term of the Court.

UNITED STATES OF AMERICA.
Eastern District of Tennessee, Northern Division, ss:

I, H. H. Taylor, Clerk of the Circuit Court of the United States within and for the Division and District aforesaid, do hereby certify that the foregoing orders are truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the City of Knoxville, Tennessee this 23rd day of April A. D. 1892.

[Seal of Circuit Court, Dist. of Tennessee.]

H. H. TAYLOR, *Clerk,*
By J. T. CARTER,
Dep. Clerk.

Endorsed: No. 864. In the U. S. Circuit Court at Knoxville. Vernon K. Stevenson et al. vs. Jasper Fain et al. Copy of orders.
1803 Executed this 26 day of May 1892. By reading and delivering a copy in person to Jasper Fain. Tyre Glenn, Marshal. By A. B. Panther D. M. United States Marshal, received May 14, 1892. Western Dist. North Carolina. Filed May 28, 1892. H. H. Taylor, Clerk.

Be it remembered that at a Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee, at the Court House in the City of Knoxville within said District and the 6th Circuit, on the 2nd Monday it being the 11th day of July 1892.

Present and presiding the Hon. D. M. Key Judge etc., the following proceedings were had to-wit:

THURSDAY MORNING, *Aug.* 11, 1892.

Court met pursuant to adjournment, present and presiding the Hon. Judge etc.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

Cause No. 864.

VERNON K. STEVENSON et al.
vs.
TIP LOVINGOOD et al.

On motion of the plaintiffs the defendants Tip Lovingood, Ki Woody, Columbus Hoss and Jasper Fain, who were duly summoned, and who have failed to appear plead or demur, to the plaintiffs' declaration, within the time limited by law, were solemnly called to come into court and defend this suit, but have failed to do so, and it appearing from the pleadings filed in this cause that Wm. H. Marr and Wm. M. Nixon have disclaimed any claim or title in and to the land described in the plaintiffs' declaration:

It is therefore adjudged that plaintiffs recover of said defendants Tip Lovingood, Ki Woody, Columbus Hoss Jasper Fain Wm. M. Marr and Wm. M. Nixon the premises described in the declaration filed in this cause which lands are as follows, to-wit:

In fractional township 2 range 7 east Ocoee District. Section 5, section 6, section 7, section 8, section 9, section 16, section 17, section 18, section 19, section 20 section 21, section 28, section 29, section 30, section 31, section 32.

1804 In fractional township 1 north range 6 east Ocoee District. Southeast quarter section 25, northwest quarter section 25, north half and southwest quarter of section 26, east half of southeast quarter of section 32, section 33, section 34, west half of section 35, northeast quarter of section 36.

In fractional township 2 north range 6 east Ocoee District. Section 3, section 4, section 5, east half and southwest quarter of section 6.

In fractional township 1 south range 6 east, Ocoee District. Northeast, northwest, and southeast quarters of section 7, east half of southwest quarter of section 7, section 17, northeast and southeast — of section 18, east half of northwest quarter of section 18, south half and northeast forty acres of southwest quarter of section 18. Section 29, section 30, section 31, sections 32, 33, 34, 35.

In fractional township 2, south range 6 east Ocoee District. Section 6, northwest and southwest quarters of section 7, southeast quarter of section 7, east half of section 18, southwest quarters of section 18, section 19, section 29, section 30, section 31, section 32.

fractional township 3 south range 6 east Ocoee District. Sec-
, section 6, section 7, northwest quarter of section 8,
fractional township 3, north range 5 east Ocoee District. Sec-
, section 2, south half of section 3, east half of section 4, east
f section 9, section 10, section 11, section 12, section 13, section
ction 15, southeast quarter of section 20, section 21, section 22,
n 23, section 24, section 25, section 26, section 27, southeast
er of section 29, section 34, section 35, section 36.
fractional township 1, south range 5 east Ocoee District. Sec-
, section 2, section 3, northeast quarter of section 12, east half
tion 31, west half of section 32.
fractional township 1, north range 4 east Ocoee District.
west quarter of section 1, southeast quarter of section 8, sec-
0, north half of section 12, north half of south half of section
12, section 15, section 16, east half of section 17, section 21,
north half and southwest quarter of section 22, section 28,
south half of section 29, east half of northeast quarter of sec-
9, southeast quarter of section 30.
fractional township 1, north range 3 east Ocoee District,
east quarter of section 10, northwest quarter of section 11,
west quarter of section 15, southeast quarter of section 16
east quarter of section 21, southwest quarter of section 21, west
f section 28, section 32. Reference being made to the official
y and maps and records of the Ocoee District of the State of
ssee for further description of said land.
d one dollar for the detention thereof and that a writ of pos-
n issue out of this court to put the said plaintiffs in possession
ccupation of the said lands.
d judgment is given in favor of said plaintiffs against all the
defendants except Marr and Nixon for all the costs of this
for which writ of execution is awarded.

President of the United States of America to the Marshal of the
stern District of Tennessee, Greeting:
hereas, on the 11th day of August 1892 in the Circuit Court
United States for said district at Knoxville, in a certain cause
in pending, wherein Vernon K. Stevenson, Matilda C. Alloway,
niel E. Alloway, Hugh Stevenson, Paul F. Stevenson, Eloise
nson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Steven-
widow of V. K. Stevenson and Geo. Peabody Wetmore were
lainants, and Tip Lovingood, Ki Woody, Columbus Hoss,
r Fain, Wm. M. Nixon and Wm. M. Marr were defendants,—
s ordered and decreed, that a writ of possession issue to put the
complainant into possession of certain tracts or parcels of land
in Monroe County, Tennessee, to-wit:
fractional township 2 range 7 east Ocoee District. Section
tion 6, section 7, section 8, section 9, section 16, section 17, sec-
18, section 19, section 20, section 21, section 28, section 29, sec-
tion 30, section 31, section 32.

In fractional township 1, north range east Ocoee District.
Southeast quarter section 25, northwest quarter section 25,

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north half and southwest quarter — 26, east half of southeast quarter of section 32, section 33, section 34, west half of section 35, northeast quarter of section 36.

In fractional township 2, north range 6 east Ocoee District. Section 3, section 4, section 5, east half and southwest quarter of section 6.

In fractional township 1, south range 6 east, Ocoee District. Northeast, northwest, and southeast quarters of section 7, east half of southwest quarter of section 7, section 17, northeast and southeast quarters of section 18, east half of northeast quarter of section 18, south half and northeast forty acres of southwest quarter of section 18, section 29, section 30, section 31, section 32, section 33, section 34, section 35.

In fractional township 2, south range 6 east Ocoee District. Section 6, northwest and southwest quarters of section 7, southeast quarter of section 7, east half of section 18, southwest quarter of section 18, section 19, section 20, section 30, section 31, section 32.

In fractional township 3, south range 6 east Ocoee District. Section 5, section 6, section 7, northwest quarter of section 8.

In fractional township 3, north range 5 east Ocoee District. Section 1, section 2, south half of section 3, east half of section 4, east half of section 9, section 10, section 11, section 12, section 13, section 14, section 15, southeast quarter of section 20, section 21, section 22, section 23, section 24, section 25, section 26, section 27, southeast quarter of section 29, section 34, section 35, section 36.

In fractional township 1, south range 6 east Ocoee District. Section 1, section 2, section 3, northeast quarter of section 12, east half of section 31, west half of section 32.

In fractional township 1, north range 4 east Ocoee District.

1867 Southwest quarter of section 1, southeast quarter of section 8, section 10, north half of section 12, north half of south half of section 12, section 15, section 16, east half of section 17, section 21, north half and southwest quarter of section 22, section 28, south half of section 29, east half of northeast quarter of section 29, southeast quarter of section 30.

In fractional township 1, north range 3 east Ocoee District. Southeast quarter of section 10, northwest quarter of section 11, northwest quarter of section 15, southeast quarter of section 16, northeast quarter of section 21, southwest quarter of section 21, west half of section 28, section 32. Reference being made to the official survey and maps and records of the Ocoee District of the State of Tennessee for further description of said land.

You are therefore commanded to take with you the force of the District if necessary and cause the said Vernon K. Stevenson, Matilda C. Alloway, Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Stevenson, widow of Vernon K. Stevenson, and George Peabody Wetmore to have possession of said property. And return to said Court at a court to be held at Knoxville on the second Monday of July next how you have executed this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Su

preme Court of the United States, at Knoxville in said district, the 10th day of February in the year of our Lord 1893 and of our Independence the 117th.

[The Seal of the Circuit Court, District of East Tenn.]

H. H. TAYLOR, *Clerk*.
By J. T. CARTER, *Dep. Clerk*.

Came to hand at Madisonville, Feb. 16, 1893. Executed in full as commanded as to Tip Lovingood, by removing him from the premises described. And putting the companies in possession through their agent W. D. Hale on May 24, 1893. Also executed as to Ki Woody, and Columbus Hoss May 25, 1893, in the same manner. The defendant Jasper Fain was permitted to remain through said agent Mr. Hale, under an agreement between 1808 them. The defendants Wm. M. Nixon and Wm. M. Marr were not found in possession of any portion of said lands and nothing was done as to them.

G. W. TALLENT,
Dep. U. S. M.

Giving three possessions	$6,00
27 mil. going May 24 & 25, 1893	1.62
3 days' horse hire	3,00
3 days' board self & horse	3,00
	$13,62

Endorsed: Issued Feb. 10, 1893. H. H. Taylor, Clerk, by J. T. Carter, Dep. Clerk, Monroe County. Filed June 7, 1893. H. H. Taylor, Clerk.

Be it remembered that at a Circuit Court of the United States began and held for the Northern Division of the Eastern District of Tennessee, at the Court House in the City of Knoxville within said district and the 6th circuit, on the second Monday it being the 8 day of January, A. D. 1894.

Present and presiding the Hon. D. M. Key, judge, etc., the following proceedings were had, to-wit:

SATURDAY MORNING, *Feb.* 10, 1894.

Court met pursuant to adjournment, present and presiding the Hon. D. M. Key, etc.

Number 864.

V. K. Stevenson et al.
vs.
Tip Lovingood et al.

In this cause an alias writ of possession is awarded to put plaintiffs in full possession of the land described in the declaration and the judgment and a writ of execution for costs paid by plain-
1809 tiffs under order of July Term, 1893, as well as costs previously adjudged against defendant will be issued on application of plaintiffs.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson, Next Friend; Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Jr., Anna L. Stevenson, Paul E. Stevenson, and Geo. P. Wetmore
vs.
Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, and Wm. M. Marr and Wm. M. Nixon.

Know all men by these presents:

That we the said plaintiffs, V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson next friend, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Jr., Anna L. Stevenson, Paul E. Stevenson, and Geo. P. Wetmore, and Chas. Seymour, surety, are held and firmly bound unto said defendnats Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, and W. M. Nixon, in the penal sum of $250 to the payment whereof we bind ourselves and each of us, and each and every of our several heirs, executors and administrators jointly and severally firmly by these presents:

Witness our hands on this the 13th day of July, 1889.

The condition of this bond is such that the said V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson next friend, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Paul E. Stevenson, Anna L. Stevenson, Jr., and Geo. P. Wetmore, commenced suit against Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, and Wm. M. Nixon, in ejectment.

Now if the said V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson, next friend Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Stevenson,
1810 Jr., Paul E. Stevenson, and Geo. P. Wetmore, shall prosecute said suit with effect or on failure thereof, pay and satisfy all costs that may be adjudged against said plaintiffs in said cause. Or on failure of said defendants if convicted to pay and satisfy said

costs if the said plaintiffs shall pay the same, then this bond to be void; otherwise remain in full force and virtue.

Attest:

V. K. STEVENSON, [SEAL.]
MATILDA C. ALLOWAY,
N. E. ALLOWAY, [SEAL.]
HUGH STEVENSON,
HUGH STEVENSON,
Next Friend. [SEAL.]
PAUL E. STEVENSON,
ELOISE STEVENSON,
MAXWELL STEVENSON,
ANNA L. STEVENSON, JR.,
ANNA L. STEVENSON,
GEO. PEABODY WETMORE.
By CHAS. SEYMOUR, *Att'y.*
CHAS. SEYMOUR. [SEAL.]

Filed July 13, 1889.
H. H. TAYLOR.
U. S. Cir. Ct Clerk.

No. 864.

VERNON K. STEVENSON et al.
vs.
THE LOVINGOOD, KI WOODY, COLUMBUS HOSS, and JASPER FAIN.

Clerk's Fees.

	Filing bill and entering rule for appearance	.25
	Acknowledgements at 25c. each & filing 10c.	.35
	Issuing 2 subpœnas each 1.00	2.00
1811	Filing same & entering returns each 25	.50
	Copying 7 subpœnas 21 folios each folio 10c	2.10
	Copying 5 bills 125 folios each folio 10c	12.50
	Filing 1 disclaimer	.10
	Entering orders & decrees 14 folios each fol. 15	2.10
	Entering 2 continuances each 15	.30
	Dockets, indexes, etc.	1.00
	Record 39 folios each folio 15c.	5.85
	Filing 1 cost bill	.10
	Certificate & seal to 12 copies 35	4.20
	2 certified copies or order of court 75	1.50
	Total clerk's fees	$32.85
	Clerk's fees	32.85
	Marshals' fees—U. S. Mar. Tyre Glenn, 2.48; Wesley Giles, 19.42; C. T. Duff, 10.72	32.62
	Docket fee—Chas. Seymour & Lucky & Stanford	5.00
	Total	70.47

Endorsed: Chancery cost bill. Filed Dec. 12, 1892. H. H. Taylor, Clerk. By J. T. Carter, Dep. Clerk.

The President of the United States of America to the Marshal of the Eastern District of Tennessee, Greeting:

Whereas, on the 11th day of August, 1892, in the Circuit Court of the United States for said District at Knoxville, in a certain cause therein pending wherein Vernon Stevenson, Matilda C. Alloway, Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Maxwell Stevenson, Anna L. Stevenson, and Geo. Peabody Wetmore, were complainants, and Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, and Wm. M. Nixon, defendants, it was ordered and decreed that a writ of possession issue to put the above named complainants into possession of a certain tract
1812 or parcel of land, to-wit:

In fractional township 2 range 7 east Ocoee District. Section 5, section 6, section 7, section 8, section 9, section 16, section 17, section 18, section 19, section 20, section 21, section 28, section 29, section 30, section 31, section 32.

You are therefore commanded to take with you the force of the district if necessary and cause the said Vernon K. Stevenson and others to have possession of said property. And return to said court at a court to be held at Knoxville on the second Monday of September next how you have executed this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Knoxville in said District the 21st day of April in the year of our Lord 1899. And of our Independence the 123rd.

[The Seal of the Circuit Court, District of Tennessee.]

HENRY O. EWING, *Clerk*.
By J. T. CARTER, *Dep. Clerk*.

UNITED STATES OF AMERICA,
Eastern District of Tennessee:

I, Henry O. Ewing, Clerk of the Circuit Court of the United States for the Eastern District of Tennessee do hereby certify that the foregoing is a full, true and correct transcript of the record and proceedings had in said court in the cause of Vernon K. Stevenson et al. vs. Tip Lovingood et al. (except the alias writ of possession issued 21st April 1899 and returned thereon which are not found in my office) as the same appear of record on file in my office.

Witness my hand and the seal of said court at office in Knoxville, Tennessee this 23 day of March A. D. 1901.

[SEAL.] HENRY O. EWING, *Clerk*.
By J. T. CARTER, *Dep. Clerk*.

End of Exhibit No. 8 to Depo. W. D. Hale.

1813 EXHIBIT No. 9 TO DEPOSITION OF W. D. HALE.

Acts of 1844, *Chapter* 196.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That a new county be, and the same is hereby established to be composed of fractions taken from the counties of Blount and Monroe, and to be known and designated by the name of Jones, in honor to his Excellency James C. Jones, the present Governor of the State, and bounded as follows. Beginning on the North Carolina Line, where the ridge that divides the waters of Abraham's creek and Hesse's creek joins the Smoky Mountain; thence along said ridge north sixty degrees west, twelve miles to where Miller's Cove road crosses said bridge in Foute's coaling ground; thence west three and a half miles to a pine tree, near the upper end of George Hatsell's lane; thence same course five miles to the top of the Chilhower Mountain, where Thompson's trail crosses said mountain; thence north seventy-five degrees west, to an ash tree in Gold Wilson's lane on the waters of six mile creek; thence north fifty-five degrees west, four miles to a black oak tree in the end of Jacob But's lane; thence north forty-five degrees west two miles, to a large white oak tree at William Garner's workshop; thence to the head of William Garner's spring; thence down the meanderings of said spring branch, including James M. Tudlork in Blount County, to nine mile creek; thence down said creek to the ford at Samuel Thompson's; thence with the main road leading by David Vaught's, to the Timothy Ford, on Little Tennessee river; thence south twenty degrees west five miles, to the point of a ridge between Ballplay and Toqua; thence same course two miles to a pine tree on the top of a high ridge south-west of Harmon's mill; thence south fifteen degrees west, four miles to a hickory tree near Daniel Plumley's Blacksmith shop; thence south twenty degrees east to David McNabb's spring, on the Unicoy Turnpike road, one mile; thence along the Unicoy Turnpike road three miles to where the said road crosses the ridge that divides the waters between Cane Creek and Tellico River; thence up the main south branch of said river to the head, a distance of twenty-one miles to the North Carolina line; thence with the
1844 State Line back to the beginning.

SEC. 2. Be it enacted, That John Harden, Samuel Glenn and Andrew Cowan, of Blount County, Arthur Henry and Joseph S. Milligan, of the County of Monroe, shall be, and they are hereby appointed commissioners, with authority to run out and designate the boundaries of said county, and also to employ a competent surveyor to ascertain by actual survey of the Counties of Blount and Monroe, from which the county of Jones is to be composed, and if upon such survey there shall be territory and population sufficient to meet the requirements of the Constitution without infringing upon the constitutional territory or population, or running the line nearer than twelve miles of the county seat of either of the counties from which said county of Jones is to be composed, then said county of Jones is hereby established upon the following conditions.

SEC. 3. It shall be the duty of said commissioners, as soon as they can ascertain that there is territory and population sufficient to constitute a new county under the requirements of the second section of this act, after first giving thirty days' notice in at least five public places in the bounds of the proposed county, of the time and place in each of the fractions proposed to be stricken off from the counties of Blount and Monroe, that they will open and hold an election in each of the fractions proposed to be stricken off from the counties aforesaid, for the purpose of ascertaining whether a majority of the voters residing in the several fractions are in favor of or opposed to the establishment of said county of Jones, and all persons qualified to vote for members of the General Assembly, who have resided in the fraction aforesaid six months immediately preceding the day of election, shall be entitled to vote, and each voter who desires to vote for the establishment of the new county, shall have on his ticket, "new county," and those desirous to vote against the new county, shall have on their tickets the words "old county," and if upon counting the Ballots, the Judges of the several elections in said fractions, shall return that a majority of each of the fractions have voted for the new county, then the county of Jones shall be, and the same is hereby established, with all the powers,
1815 privileges, and advantages, and subject to all the liabilities and duties of other counties in this State.

SEC. 4. All officers, civil and military in said county, shall continue to hold their offices, and exercise all the powers and functions thereof until others are elected according to law, and the said county of Jones shall elect her officers on the same day and under the same rules and regulations as provided by law for the election of officers in other counties, in this State.

SEC. 5. The Commissioners appointed by the second section of this act, shall appoint such persons as they may deem suitable to open and hold the election for the county officers for the said county of Jones, and such persons so appointed, shall be and they are hereby invested with full power and authority to appoint deputies, Clerks, and Judges, and by himself and deputies, to administer all necessary oaths, and to do and perform all other duties as by law are required by Sheriffs or other officers holding similar elections.

SEC. 6. Be it enacted, That the seat of Justice for said county of Jones, shall be located at Joseph Ashley's, on Little Tennessee River, and be known by the name that a majority of the commissioners appointed by the second section of this act, may give to it, but the county court in the intermediate time, may adjourn to such other place in said county, as they may deem better suited for holding the same for the public convenience, and to adjourn to the seat of justice whenever the necessary arrangements are made, or public buildings erected, and all writs and other precepts returnable to either place, shall and may be returned to the place where said courts may have been removed by the county courts aforesaid; and the said courts to be holden in and for the county of Jones, shall be under the same rules, regulations and restrictions, and shall have, hold and exercis, and possess the same power and jurisdiction as are possessed

by said court in other counties in this state: Provided, nothing in this act contained, shall be so construed as to prevent the county of Blount and Monroe from entering up Judgments, or the Sheriffs of said counties from selling under such judgments, any
1816 lands within the bounds of said county of Jones, for the taxes, costs and charges, due for the present or any preceding year, nor to prevent the Sheriffs of either of said counties from collecting from the citizens of Jones county any taxes due for the present or any preceding year.

SEC. 7. Be it enacted, That it shall be the duty of the said commissioners, aforesaid, as soon after the county of Jones shall have been established as practicable, to procure by purchase or otherwise, a sufficient quantity of land upon which to lay off a town, and to erect all necessary public buildings for said county, at the place designated in this act, and the commissioners shall take to themselves and their successors in office, a deed or deeds of conveyance with general warranty, for the lands by them so purchased, or otherwise obtained.

SEC. 8. It shall be the duty of said commissioners to cause a town to be laid off in said county at seat of justice, into lots, streets and alleys of such size and width as they may deem necessary, reserving a sufficient quantity of land for the purpose of erecting a jail, court house and other public buildings, as may be deemed necessary for said town.

SEC. 9. The commissioners of said county shall sell the lots in said town, on a credit of at least twelve months, first giving thirty days' notice in some public newspaper published in the State, and setting a day on which the sale will take place, and shall take bond with security from the purchasers of said lots, payable to themselves and their successors in office, and shall make title in fee simple as commissioners, to the respective purchasers of said lot.

SEC. 10. The proceeds of the sale of the lots aforesaid, shall be a fund in the hands of said commissioners, for the defraying the expenses incurred in the purchase of said tract of land on which the said county seat shall be located, and also for defraying the expenses of erecting the necessary public buildings for said county of Jones.

SEC. 11. The commissioners shall superintend the building of such public buildings as the county court of said *court* shall order
and direct to be built, and shall at the same time, take bonds
1817 from the undertakers, with ample penalties and sufficient securities, payable to themselves and their successors in office, conditioned for the faithful performance of his or their contracts.

SEC. 12. Be it enacted, That it shall be the duty of said commissioners, to report all proceedings by them had under this act, to the county court of said county of Jones, when called on so to do, and said commissioners, before they enter upon the duties assigned them by this act, shall take an oath before some Justice of the Peace, to faithfully and honestly perform the duties of their office to the best of their judgment and ability, and they shall moreover enter into bond with security in the penalty of three thousand dollars, payable to the chairman of the said county of Jones, and his successors in

office, conditioned for the faithful performance of the duties enjoined upon them by this act, and for the just application or forthcoming of such funds as may come to their hands as commissioners aforesaid.

SEC. 13. Be it enacted, That said commissioners shall keep a regular and fair record of all monies by them received, and the amount expended, and when the public buildings of said county shall have been completed, the commissioners shall, by order of the county court, pay over any surplus money that may be in their hands to the county trustee of said county, for county purposes, and they shall, for their service as commissioners, receive such reasonable compensation as shall be adjudged them by the County Court of Jones.

SEC. 14. The said commissioners shall also appoint five commissioners, whose duty it shall be to divide and lay off said county of Jones into civil districts, designate the place for holding elections therein, and do and perform all the duties relative thereto, which by the laws of the state, such commissioners are authorized and required to do.

SEC. 15. Be it enacted, That the County of Jones be, and the same is hereby attached to the second judicial circuit, and the circuit courts thereof shall be held by the judge of said circuit on the first Monday after the fourth Mondays in January, May and
1818 September in each and every year, at the county seat of said county, or such other place as the county court may direct, until there is the necessary public buildings erected at the seat of justice in said county.

SEC. 16. Be it enacted, That the county of Jones shall be attached to the chancery court district, to be holden at Madison in Monroe County, and all appeals, writs of error, and appeals in the nature of writs of error from the Circuit Courts of said county of Jones, shall be taken to the Supreme Courts to be held for the eastern division of the State at Knoxville.

SEC. 17. The Militia of the county of Jones shall form one Regiment, which shall be known and designated as the 159th Regiment, and shall be attached to the fifth Brigade of Tennessee Militia; the commissioned officers in the bounds of said county, shall muster at the county seat as soon as practicable after the organization of said county of Jones and divide said Regiment into Battalions and Companies, and provide for the electing all officers in said Regiment, in the same manner as now provided for by law in other counties in this state.

SEC. 18. Be it enacted, That the citizens of the county of Jones, in all elections for President and Vice-President, members of Congress, Governor, and members of the General Assembly, shall vote with the counties from which they may have been stricken off, until the next appointment of members of the General Assembly agreeably to the Constitution.

SEC. 19. Be it enacted, That nothing in this act shall be so construed as to prevent the counties of Blount and Monroe from having, holding and exercising jurisdiction over the territory composing

the county of Jones, and the citizens thereof, in as full and ample a manner as they now have, until the election of county officers, and organization of the said county of Jones.

SEC. 20. Be it enacted, That if the commissioners should think it advisable for the purpose of saving expense, to submit the question of reception or rejection of said new county to the people, as provided for in this act, before making the survey as required by the
1819 second section, they are hereby authorized to do so, by giving notice as required by this act, and if a majority of the voters of any fraction proposed to be stricken off from Blount or Monroe Counties, cast their votes against the said new county, then this Act to be null and void; Provided, the fraction so refusing to be included in said new county, reduce the voting population below four hundred and fifty votes, as provided for in the constitution.

D. L. BARRINGER,
Speaker of the House of Representatives.
J. M. ANDERSON,
Speaker of the Senate.

Passed January 27th, 1844.

End of Exhibit No. 9 to deposition of W. D. Hale.

1820 EXHIBIT NO. 10 TO DEPOSITION OF W. D. HALE.

No. 22179.

THE STATE OF TENNESSEE:

To all to whom these presents shall come, Greeting:

Know Ye, that in consideration of an entry made in the entry Taker's Office of Blount County of No. 627 dated the 15th day of October 1830, by John H. L. Peck: there is granted by the State of Tennessee, unto the said John H. L. Peck and his heirs a certain tract or parcel of land containing Five Thousand Acres lying in the County aforesaid on Tennessee River, Beginning at a White Oak marked as the 64 Mile Tree on the State line and on the Bank of the River then with the meanders thereof Twelve Hundred and Fifty Poles when reduced to a straight line to a stake, then north twenty East Six Hundred and Forty poles to a stake, South eighty east twelve hundred and fifty poles to a stake near a locust marked as the 62nd Mile Tree on the State Line, then with the same to the beginning.

Surveyed 22nd, of November 1838 with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said John H. L. Peck and his heirs forever. In witness whereof Newton Cannon, Governor of the State of Tennessee has hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 28th, day of November in the year of our Lord one thousand eight hundred and thirty eight and of American Independence the Sixty-third.

By the Governor:

LUKE LEA, *Secretary.* N. CANNON.

1821 STATE OF TENNESSEE:

I, J. G. Stuart, Register of the Land Office of East Tennessee, do hereby certify that the within is a true and correct copy of Grant No. 22179, from the State of Tennessee to John H. L. Peck, as the same appears of record in Vol. 22, at Page 106, Records Land Office for East Tennessee, at Knoxville.

Witness my hand this 3rd day of January 1911.

J. G. STUART,
Register Land Office for E. Tenn.
L. D. SNEED,
Deputy Register.

Endorsed: No. 22179. Grant from the State of Tennessee to John H. L. Peck.

End of Exhibit No. 10 to deposition of W. D. Hale.

1822 EXHIBIT NO. 11 TO DEPOSITION OF W. D. HALE.

Book 158, Page 716.

No. 1499—Know ye that we have granted unto William H. Thomas six hundred & forty acres of land in Macon County—on Tennessee River Beginning at a white oak at the sixty two mile tree in the state line, runs with the state line East eighty poles to a stake, thence North fifty East one hundred poles to a Public Road, thence North thirty five East one hundred & forty poles to Locust sixty one mil/ tree, then South four hundred & eighty poles to the river, then down with the meanders of the River two hundred & forty poles to a white pine on a clift, then North three hundred & twenty poles to the Beginning Entered the 9th day of July 1852. To Hold to the said William H. Thomas his heirs and assigns forever. Dated the 18th day of August 1854.

DAVID S. REID.

WM. HILL, *Secretary.*

Book 158, Page 717.

No. 1500.

STATE OF NORTH CAROLINA:

Know ye that we have granted unto William H. Thomas six hundred & forty acres of land in Macon County—On Tennessee River. Beginning at a Hickory 63rd mile tree in the State line runs East with it three hundred & twenty poles to a white oak & Locust 62nd mile tree in the State line, then South three hundred & twenty poles to a pine at the River, then down the River crossing it three hundred & twenty poles to a stake then North three hundred & twenty poles to the Beginning—Entered the 9th day of July 1852 To hold to the

said William H. Thomas his heirs and assigns forever Dated the 18th day of August 1854.

DAVID S. REID.

WM. HILL, *Secretary.*

1823 Book 158, Pge 717.

No. 1501.

STATE OF NORTH CAROLINA:

Know ye that we have granted unto William H. Thomas six hundred and forty acres of land in Macon County on Tennessee River. Beginning at a white oak sixty four mile tree in the State line sixty poles from the River, runs North sixty five East one hundred & twenty poles to a pine, then North thirty East one hundred and forty poles to a hickory 63rd mile tree in the State line, then South four hundred & sixty poles to the River, then down the River to a Rock opposite the beginning, then East sixty poles to the Beginning—Entered the 9th day of July 1852 To Hold to the said William H. Thomas his Heirs & assigns forever Dated the 18th day of August 1854.

DAVID S. REID.

WM. HILL, *Secretary.*

End of Exhibit No. 11 to deposition of W. D. Hale.

1824 STATE OF NORTH CAROLINA,
DEPARTMENT OF STATE,
RALEIGH, *Nov.* 28, 1910.

I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify the foregoing and attached three (3) sheets to be true copies from the records of this office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

Done in office at Raleigh, this 28th day of November in the year of our Lord 1910.

[Seal State of North Carolina, Department of State.]

J. BRYAN GRIMES,
Secretary of State.

1825 The further taking of the deposition of Mr. ROBERT T. QUARLES is resumed, as follows:

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 1. Mr. Quarles, have you had brought to you from the State Archives at Nashville the map to which you referred in your cross-examination by Mr. Matthews as the "Hiawassee Purchase map?"

A. Yes sir.

R. D. 2. Is that it here before you?

A. Yes.

R. D. 3. Where did you find that map?

A. That was found in the basement of the capitol the same as the other papers, they were nearly all together, out under the steps on the West side.

R. D. 4. Was that the map of which you gave Mr. William R. Hopkins photographic copy?

A. Yes.

R. D. 5. Mr. Quarles, have you spent much time in examining handwriting?

A. Well, yes, a good deal.

R. D. 6. How long?

A. Perhaps 30 years.

R. D. 7. How long have you been connected with the State Department at Nashville?

A. 41 years.

R. D. 8. Do you know the true and genuine signature of Robert Armstrong?

A. I have seen it frequently, and I don't know but that I could swear to the signature, and I have seen it very frequently and I would recognize it any where.

R. D. 9. I call your attention to the signature "Surveyor of Tennessee" on the map of 1821 and what purports to be his
1826 signature in front of the word "Surveyor" on this Hiawassee Purchase Map, and I will ask you to state which of those you believe to be his genuine signature, or whether you believe both of them to be his genuine signature?

A. This more nearly represents his signature than this.

R. D. 10. Which more nearly represents his signature?

A. The one on the Hiawassee Purchase Map. I have seen it signed more on official documents and that seems to be closer to it than on this one.

R. D. 11. You believe the one on the Hiawassee Purchase Map to be his signature rather than his signature which appears on the map of 1821?

A. I do.

R. D. 12. Now Mr. Quarles, I will ask you to file as Exhibit No. 5 to your deposition a copy of this Hiawassee Purchase Map?

A. I will do so.

R. D. 13. Now I will ask you to also produce this map—this original Hiawassee Purchase Map, as you call it, before the Supreme Court of the United States on the hearing of this cause for such examination as might be desired there, along with the copy of the map of 1799 to which you referred the other day as having been procured from North Carolina and this so-called map of 1821?

A. I will do so.

Recross-examination by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 1. Mr. Quarles, this map of the Hiawassee purchase was a map made for the United States Government, was it not?

A. I couldn't say that. That was the line that was drawn—a line that the United States had run originally, but whether this plat was run for the United States Government I couldn't say. As I understand it, it was to separate the line of the State of Tennessee to those Indian lands to which the title had not been extinguished.

1827 X Q. 2. Did you ever know Robert Armstrong?

A. No sir.

X Q. 3. Did you ever see him write?

A. Never.

X Q. 4. You only saw the name of Robert Armstrong signed to documents?

A. I have seen official and unofficial documents that were signed by him. Of course I don't know whether the man signed the papers, the papers purported to be signed by Robert Armstrong. I found this paper and that paper which purports to be signed by him.

X Q. 5. And you only judge of his signature, of those signatures which you have described from having seen them?

A. Yes sir.

X Q. 6. You never saw him write?

A. No.

X Q. 7. You never saw any writings of his that you knew absolutely of your own personal knowledge to be genuine, did you?

A. No sir.

X Q. 8. Have those signatures ever been questioned, either of them?

A. No, not until here on this map.

X Q. 9. What is your belief, or have you any belief, about both of them?

A. This looks more like his usual signature than this—I mean the signature on the Hiawassee Purchase Map is more like his official signature on official documents that I have seen.

X Q. 10. Would you be willing to say that the other is not his genuine signature?

A. I don't believe I could swear that was his signature, but I don't believe it is, it don't impress me as being his genuine signature.

Mr. MATTHEWS: Complainant excepts to all this testimony on the ground that the witness has not qualified himself to testify as to handwriting.

And further this deponent saith not.

ROBERT T. QUARLES.

1828 Sworn to before me December 2nd, 1910.

S. E. CLEAGE,
Supreme Court Clerk.

Gen. CATES: The defendant, State of Tennessee, in accordance with the stipulation, here offers the testimony of Mr. O. W. Muller taken in the original case of Hebard v. Belding and others, and also his testimony taken under the bill of review in that case in the United States Circuit Court at Knoxville.

1829 In the U. S. Circuit Court, at Knoxville.

W. R. HOPKINS et al.
vs.
CHAS. HEBARD.

&

D. W. BELDING et al.
vs.
CHAS. HEBARD et al.

Deposition of O. W. Muller, Witness for Respondents, Taken on 8 Day of May, 1908.

O. W. MULLER.

Examined by Mr. McCROSKEY:

Q. What experience, if any, have you had in locating the State line between Tennessee and North Carolina?

A. I was on that survey twelve years ago running the State line from close to the turnpike road to Hiawassee River.

Q. Are you the same W. O. Muller whose deposition was taken in the original suit?

A. Yes, sir.

Q. How much time in all have you devoted to locating the State line between North Carolina and Tennessee?

A. About seven weeks.

Q. How much of that time was given particularly to the line in dispute in this cause?

A. Well, about four or five weeks.

Q. Have you seen the original map filed at Nashville, a certified copy of which is filed as Exhibit "A" to the deposition of D. B. Burns?

A. Yes, sir.

Q. How did it happen that you saw the map?

A. I was sent there by Mr. Seymour to get a certified copy—to hunt it up and get a certified copy and to look for other papers.

Q. What first called your attention to that map, if anything?

1830 A. I received a message from Mr. Seymour that a report of that kind of a map had been found, and requesting me to go and see about it.

Q. I will ask you if you saw a notice or publication in any newspaper stating that such a map was found, and if so state what paper it was, the date received, and whether or not you preserved a copy or portion of said paper showing said publication?

Mr. McQUEEN: We object to that question, on the ground it is immaterial and irrelevant,

A. I did. It was published in the Tribune of this City, about the

n of March, 1906, I think, is the date—the 6th or 7th of March. I served a copy of said paper.

Q. I will ask you if your affidavit has been heretofore taken in s cause, and with said affidavit you filed a copy of said paper showg said publication?

A. Yes, sir.

Q. I hand you the affidavit and the accompanying publication. ease examine them and state whether that is the same paper and of the affidavit and copy of publication as Exhibit A to this ur deposition?

A. Yes, sir; and I so filed the same as requested.

(Said affidavit, with copy of publication attached, are marked xhibit "A" to this deposition, but is returned to the general files this cause, in the custody of the Clerk of this Court, for the rea- n that it is a part of the files before being offered as an exhibit in is deposition.)

Q. You found the map at Nashville, did you?

A. Yes, sir.

Q. State whether or not you got a copy?

A. Yes, sir.

Q. State whether or not the copy that you obtained is practically e same as the copy filed as Exhibit "A" to the deposition of D. B. urns in this cause?

A. It is practically the same, I think; it looks just like it.

Q. State whether or not you have undertaken to locate the State line in the locality where this line is in dispute?

831 A. Yes, sir.

Q. And if so, state the first preliminary steps that were ken by you, and with whom?

A. Well, the first I tried to get the bearings and distances from e map, making proper allowance for the variation of the magnetic eedle, and I was not able to go to the mountains at that time, and did not go; Mr. Hale went by himself, so I understood.

Q. State whether or not you undertook to get the degrees and ngles as indicated upon said map so that you could undertake to n the line in accordance with said degrees and angles?

A. I did.

Q. State whether or not it was possible to take those calls and cate the State line by the map as shown to you today?

A. We couldn't fit it to the territory.

Q. Please state what actual surveying you did yourself in conection with Mr. Hale

A. Do you want the surveying that was done ten years ago?

Q. No, sir, just this last time.

A. We went up the Tennessee River and started at the Cooper amp Branch, and ran up a spur until we struck the State line idge, where the State line is undisputed, on the north side of the ennessee River.

Q. How far was this point from the river?

A. I haven't got my notes.

Q. Approximately?

A. Approximately it is about a couple of miles.

Q. Proceed and state what you did?

A. And then we followed the line and looked at the marked trees that we had seen twelve years before. Some of them had been mutilated by being blocked; others we found, and then we came down to the river, following that line, at the river we found the same old spruce pine, or hemlock; whichever you call it; it had been blocked on one side. When we first saw it, it was a well-defined State-linemark, but one side had been blocked; the other side was still intact. This tree stands between two little branches, on
1832 a little ridge, which is a continuance of the spur that comes down from the main ledge of the river. Understand, it stands on top of the ridge, between the two branches.

Q. Mr. Muller, please state what you did with a view of locating the line, taking this newly discovered map as your guide?

A. We then tried as a base at the crossing of the river, and tried to fit it back towards the north, and we did not succeed, and we tried to fit it by crossing the river; tried to fit those bearings on the south side of the river, and it wouldn't work. Then we went to the mouth of Slick Rock Creek and meandered that creek—run up that creek about two miles, and it was not satisfactory there; then we went up the Tennessee River to the mouth of Cheah and run up it, to get the location of it. That is about all the surveying we did.

Q. Is it possible for you, as a surveyor, or for any other competent surveyor, to take that line or tracing and locate the State line as indicated on that map?

A. The map indicates that the State line runs on top of the ridge from the shading, and it indicates that it crosses the river at right angles, and I could not locate that line on top of a ridge in that country the way it is sketched here on this map.

Q. North of the river the line shows the shading on the left hand side, or southeast side. From your experience and knowledge as a surveyor, what did that shading indicate?

A. It indicates that the line is on top of the ridge.

Q. South of the river you find the same shading. What does that indicate also?

A. It indicates the same thing.

Q. If I understand you, then, if it was following the ridge on the north side of the river the same shading would necessarily indicate that it was following a ridge on the south side; is that correct?

A. Yes, sir.

Q. Near the mouth of the stream marked "creek" on the
1833 south side of the river, how does the marked line indicate the running, with reference to said stream or creek?

A. It indicates that it runs on the east side—the line runs on the east side of it—the line runs on the southwest side of the water course. And I see some shading on both sides of the line here, right close to the river.

Q. What does that shading indicate?

A. It indicates that between the shading is the top of a ridge.

Q. State whether or not it indicates that the ridge is followed where the shading is shown?

A. That is my opinion of it.

Q. State whether or not there are any angles in that part of the line which shows running along the stream or creek, and tell what those angles are?

A. It runs for half a mile with no angle; it is a kind of a bend here, and then it turns to the right and runs perhaps forty rods, and then turns again to the left, running about the same distance, and then again to the right, running about eighty rods, or perhaps 160, perhaps half a mile.

Q. Are you thoroughly familiar with the topography of the country at and near the mouth of Slick Rock Creek, and on both sides of the creek?

A. I cannot say that I am thoroughly familiar with it.

Q. State whether or not you have been there with a view of examining the topography, and particularly as to the ridges?

A. I have.

Q. Is there any ridge at or near the mouth of Slick Rock Creek that would indicate this line, as shown on this newly discovered map, running the same course as indicated by that map?

A. We tried to fit the courses and the map to the ridges there, but could not succeed. We could not find anything to fit it.

Q. Are there any ridges or spurs running out from near the mouth of Slick Rock Creek on the lower south side, and if so, in what direction does the ridge run?

1834 A. From the north side to 3-ridges it runs over the river from the main State line ridge. The ridge from the mouth of Slick Rock Creek runs in a southwesterly direction. It is a little south of west.

Q. What ridge does that connect with?

A. I think they connect finally with the Big Stack of that lead.

Q. What does it reach before it gets to the Big Stack if anything?

A. It reaches what they call Stiff Knee Gap.

Q. Where is that with reference to the head of Little Slick Rock?

A. It is right above the head of it.

Q. State whether or not, following continuously the spur of the mouth of Slick Rock to Stiff Knee and around that way, whether it would pass Stiff Knee and thence Little Fodder Stack and Big Fodder Stack?

A. Yes, sir. You can follow the ridge around that way; there are some deep gaps, one deep gap that I know.

Q. Between that ridge and the mouth of Little Slick Rock Creek are there any other spurs and ridges?

A. Yes, sir.

Q. And if so, what do they connect with?

A. They all run from the Big Stack lead down to Slick Rock on that side.

Q. No, I am speaking of on the other side, Mr. Muller?

A. On the east side?

A. No, on the west side, or northwest side; I am speaking of on

this side over here (indicating on map); here is the Big Stack over here; are there any spurs along in here?

A. Those spurs, they run to the river.

Q. Are there any spurs running from Slick Rock Ridge towards Slick Rock Creek?

A. Yes, sir.

Q. State whether or not you followed up any of those spurs?

A. Yes, sir, I followed up some of them.

Q. Please state whether it is possible to make the newly-discovered map and the line indicated thereon correspond with and follow any ridge on the west, or northwest, side of Slick Rock Creek?

1835

A. It is not possible to lay those bearings and distances down on any of those ridges.

Q. Have you recently examined the topography of the country on the south side of the river and above the mouth of Slick Rock Creek with reference to this newly-discovered map?

A. Yes, sir.

Q. Is it possible to locate that map with reference to any particular ridge in that locality?

A. No, sir; I think not.

Q. State whether or not you examined the ridges and the section of country in that neighborhood of that particular view to see whether any of them would fit that map?

A. Yes, sir, and we failed to fit them.

Q. From the map it would indicate that the Commissioners in crossing the Tennessee River from the northeast to the southwest, crossed at or near the mouth of a stream, which stream is shown on said map. Is it possible to fit the stream and the ridges in the locality of Slick Rock Creek from said map?

A. No, sir.

Q. Is there any other stream in that locality which would come as near, or nearer answering the stream as shown on the map, and if so, what stream is it?

A. Cheah River.

Q. Where is Cheah River located, with reference to where the line strikes the river on the north side?

A. About a mile and a quarter above.

Q. Above what?

A. Above where the line strikes the river; above that spruce pine that is marked on the bank of the river.

Q. Are there any spurs from the main ridge on the north side of the river leading down towards Cheah River?

1836

A. Yes, sir.

Q. Are there any spurs on the south side leading from or near the mouth of Cheah River to the main Hangover lead?

A. Yes, sir.

Q. Have you examined those ridges?

A. I have examined several of them.

Q. Are any of those ridges accessible to persons passing through the country?

A. We surveyed two of them.

Q. State whether or not persons going through that country, who are not familiar with it, would be apt to follow the spur leading down to and away from the mouth of the Cheah River as any other spurs in that section, and if so, explain why?

A. Why, I was in that condition when I first went there and traced the State line; on the State ridge, I came to a place where it forked, and we took the left hand as the most prominent spur running down to the river. This was about 1,900 feet above where we found the spruce pine. There was another spur that runs to the right, and runs lower down on the river; runs down about the mouth of Slick Rock Creek. It winds a good deal; it is not a straight spur; I believe they call it Lester Ridge. And then there was a middle spur, upon which we found the marked State line that runs down to the spruce pine where we crossed the river.

Q. Getting back to my question, tell us why a person would be inclined to follow those ridges to the mouth of the Cheah River, and then follow a ridge to the main ridge on the south side. Is that more accessible in there, or not? Please explain?

A. They are equally accessible. Those spurs are all tolerably rough, but they are about equally accessible, and what determines one that is unacquainted and is hunting the line would be the height of the ridges as showing the main ridge.

Q. Are those ridges in that particular locality the highest?

A. Well, the most prominent ridge you see from the north side of the river is the Hangover lead.

1837 Q. I am speaking of the spur that leads down to the mouth of the Cheah River.

A. Certainly. I say, standing on the north side of the river looking across, you see the most prominent ridge over there, which is the Hangover lead; it is the highest. That answers the question, doesn't it?

Q. The question I want you to answer *is*, Mr. Muller, is: Taking strangers, who are in that neighborhood and desiring to cross the river, where would be the most convenient, accessible place, following the ridges and taking the river itself, the topography of the country, to get from one side of the river to the other and then reach the main ridge?

A. You would have to cross the river just below the mouth of the Cheah. It is the only place you can cross there with safety. There is an eddy there, and the rest of the river is very rough down below there.

Q. Is there a ridge running down to that point from the north side?

A. Yes, sir.

Q. State whether there is a ridge running from near that point on the south side to the Hangover lead?

A. Yes, sir.

Q. Taking Exhibit "B" to the deposition of D. B. Burns on the north side of the river, that red line indicates the State line to the

Tennessee River on the north side. State whether or not that line approximately shows the State line on the north side?

A. I think it does.

Q. On the south side, the red line indicates the State line as located by Mr. Burns up Slick Rock Creek. Is it possible to take the newly discovered map and locate the line up Slick Rock Creek, as they have it on the map, and if not, please state why?

A. It is not possible, because it makes a gap here of half a mile that is not accounted for.

Q. State whether or not it is possible to locate it off Slick Rock Creek, taking that map as your guide?

A. We did not do it.

Q. Well, can you do it?

1838 A. No, sir, we could not—couldn't do it.

Q. Is it possible to do so, Mr. Muller, taking that map as your guide?

A. No, sir, it is not possible.

Q. Is there any indication on this newly discovered map that shows that a line would follow up any stream for a distance of five miles?

A. No, sir.

Q. Is it possible to construe the map in any way, showing that it had followed Slick Rock Creek, taking the shading and all together?

A. There is no indication that it followed up a valley. The indications are that it had taken the crest of the mountain just as quick as it could leave the river.

At the request of complainants' counsel, this deposition is closed, with the request to cross-examine at a future date, if so desired. Which is not consented to by counsel for the Smoky Mountain Land, Lumber and Improvement Company.

And further deponent saith not.

O. W. MULLER

Sworn to before me this May 8th, 1908.

[SEAL.] R. S. C. HUTCHINSON,
Notary Public.

Stipulation.—It was agreed by and between the parties that the Notary Public might sign the name of the witness to this deposition, the same not having been read over to the witness before signing, nor after nor before being written up.

O. W. Muller, forty-five miles, two days.

1839 O. W. MULLER.

Cross-examination by Mr. MATTHEWS:

Q. Mr. Muller, you are the same W. O. Muller who has heretofore testified in this case on this branch of the case?

A. Yes, sir.

Q. And you also testified in the original case, did you not, that was tried some years ago?

A. Yes, sir.
Q. You are a land surveyor?
A. Yes, sir.
Q. And live at Sweetwater?
A. I live in Monroe County on a Rural Route; Sweetwater is my post office.
Q. How long have you lived there?
A. About five or six years.
Q. Where did you live before that?
A. Polk County.
Q. That is further south, down towards Chattanooga?
A. Yes, sir; south of Monroe.
Q. And you say you have been a land surveyor about forty years?
A. Yes, sir.
Q. What were you before that?
A. Well, I was a school teacher a part of the time.
Q. Where did you learn land surveying, and how?
A. Well, I learned it at school.
Q. You mean while you were a scholar, or while you were a teacher?
A. As a scholar.
Q. And how far did you carry along your schooling in that profession?
A. I am entitled to the degree of A. M.
Q. What institution?
A. Hiwassee College.
Q. How high in the mathematical curriculum did you go?
1840 A. I went through navigation—surveying navigation.
Q. You have studied geometry and trigonometry and geometrical geometry?
A. Yes, sir.
Q. Where has your surveying been principally confined?
A. Well, I have surveyed in East Tennessee and in Georgia.
Q. Surveyed any in North Carolina in Graham County?
A. No, sir.
Q. Acquainted with any of the streams over there?
A. I am acquainted with some of the streams.
Q. You say you are acquainted with some of the streams?
A. Yes, sir.
Q. Do you know the Cheoah River?
A. Yes, sir.
Q. Where does the Cheoah River rise?
A. I don't know just where it rises; up there in the mountain somewhere.
Q. How much are you acquainted with it; how far along its banks have you been?
A. About a mile—something like a mile.
Q. From its mouth?
A. Yes, sir.
Q. Do you know how long it has been known under that name?
A. No, sir.

Q. How long have you heard of it under that name?
A. I have known it for fourteen years by that name.
Q. Where were you born?
A. In Prussia.
Q. When did you come to this country?
A. In 1846.
Q. Settle down in this country?
A. Yes, sir.
Q. Cheoah is a pretty crooked stream isn't it?
A. It runs from the mouth to where it made a sharp turn to the left.
1841 Q. And then doesn't it run quite a length almost parallel with the Tennessee River?
A. It looks like it did.
Q. And then winds up to a shorter north or to northwest a little bit, and then goes off to the left?
A. I can't tell how it runs, only from the map. That is as far as I went.
Q. Are there any streams entering into the Tennessee River between the Cheoah and Slick Rock Creek?
A. Some little streams. One I remember, a small branch.
Q. A small branch of what?
A. A small water course.
Q. Little runs?
A. Small runs. That is what you would call it, I suppose.
Q. Nothing compared with the Slick Rock Creek or the Cheoah River, I suppose?
A. No, sir.
Q. Nothing that you put down on any map that you ever made of that section when you made your surveys?
A. I don't remember whether we made that little branch or not.
Q. Weren't you with Mr. Hale when he made the old survey in the old case?
A. Yes, sir.
Q. Did you take any part in preparing the map, or go over it after he prepared it?
A. Yes, sir.
Q. Look if there is laid down there any stream between the Slick Rock and where the Cheoah ought to be.
A. No, sir; there is no stream laid down.
Q. Cheoah River isn't laid down on this map is it?
A. No, sir.
Q. About how far is Cheoah River from the Slick Rock Creek—about?
A. I haven't got my notes. I think it is about a mile and a half.
1842 Q. Isn't it further than that?
A. Not much further than that.
Q. Well, isn't it fully a mile and a half to where you found these trees marked down to the bank of the Tennessee River?
A. I don't think it is quite a mile and a half.

Q. You never measured it?

A. Yes, we measured it, but I don't remember.

Q. How does it compare in size with the Slick Rock Creek?

A. It is a good deal larger—about three times as much water in it.

Q. Is it visible from a point, say, a half a mile back up the river from the north or northwestern side of the Tennessee River? Can you look down that side and see it.

A. If you knew it was there you could see it.

Q. If you didn't know it was there you couldn't see it?

A. No, sir.

Q. Comes out in a sort of a gorge, doesn't it?

A. Yes, sir.

Q. Now, you recently went with Mr. Hale and had this map with you, didn't you—this map of 1821?

A. Yes, sir.

Q. How far back did you go to start from the Tennessee River north?

A. I think it was six thousand feet and something.

Q. Didn't go back as far as the turnpike?

A. No, sir. We started a little above the mouth of Cooper Camp Branch, and we run up a spur until we struck the State line on the north side of the river. It seems to me that it is about six thousand feet up there—a little over a mile.

Q. There the State line came down, and you thought it was undisputed so far as that point was concerned?

A. We struck the State line there that we had run thirteen years before, and which was marked by a good many trees. We had traced it and run it down the river. We struck the State line there and then we came down the State line to the river.

1843 Q. Now, standing at that point, about six thousand feet back there, could you see the Cheoah River from there?

A. I don't remember whether we could see the Cheoah River or not?

Q. Could you see the gorge out of which it came?

A. Yes, sir.

Q. Could you see the Slick Rock Creek from there?

A. Well, you could see the gorge, I think, but that is the Slick-rock Creek Branch.

Q. That is where the Slick Rock Creek comes out?

A. Yes, sir.

Q. How far down the Tennessee River and down the different ridges can you see from there?

A. That is pretty hard to tell.

Q. Well, can you see as far down as the Hangover and the Big Fodder Stack come together?

A. Yes, sir.

Q. How far beyond that can you see—about, I mean?

A. You can see the whole range of mountains—have a pretty good view from there.

Q. Now, what is it that is called the Unicoi Range?

A. I think the highest range there is called Unicoi.

Q. Well, is it called the Unicoi Range after the junction of Hangover and the Big Fodder Stack?

A. It is called the Unicoi Range before the junction and after the junction, too.

Q. All of them is called the Unicoi, or just one range of them?

A. The main range, and then the spurs run down, and I consider them all belonging to the same range.

Q. Can you give us any idea how far beyond the junction of the Hangover and Big Fodder Stack you can see along the tops of the mountains?

A. On a clear day you can see the mountains a good piece.

Q. As much as thirty miles?

A. You might see them that far.

1844 Q. And a continuous range?

A. Yes, sir.

Q. Now, when it comes to that junction, and coming from the south side of the range and coming towards the river, how there does it divide off?

A. Which?

Q. The range of mountains. There is a range of mountains that come along to that junction that I speak of—the junction of Hangover and the Big Fodder Stack—and there it divides, does it not?

A. I call it dividing.

Q. And into how many spurs does it divide, and where do they go to reach the river?

A. A good many spurs hang down over the river on each side, and the Big Fodder Stack is one of the main spurs that runs over the river.

Q. Does that run off to the left a little coming to the south?

A. Yes, sir.

Q. And that starting point is the junction of Big Fodder Stack and Little Fodder Stack, is it?

A. Yes, sir.

Q. And about how far from that does the Little Fodder Stack branch off?

A. I couldn't tell you just the distance.

Q. Nor give us any idea of it?

A. Probably a couple of miles from there.

Q. Now, is the Big Fodder Stack then merged into the Little Fodder Stack, or does it go on further and the Little Fodder Stack branch off from it?

A. The Little Fodder Stack branches off from the Big Fodder Stack.

Q. And where does the range of the Big Fodder Stack go?

A. It runs down towards Slick Rock.

Q. Down about Rabbit Creek?

A. No, sir.

Q. Where does it strike the Tennessee River—about Rabbit Creek, doesn't it?

A. I am not sure whether it is Rabbit Creek or not.

Q. It strikes it about a mile and a half lower down than
1845 Slick Rock Creek, doesn't it?

A. There is one spur from the Big Fodder Stack that runs down between Big Slick Rock and Little Slick Rock.

Q. Which range is that? I mean which branch is that?

A. Little Slick Rock is more to the south.

Q. Does Little Slick Rock run into Big Slick Rock?

A. Yes, sir.

Q. Is that what you are talking about—the Big Fodder Stack?

A. The Little Fodder Stack.

Q. You say you don't know where it strikes the Tennessee River?

A. No, sir.

Q. You do think it strikes the river near the Big Slick Rock?

A. I think the main spur from Big Fodder Stack does.

Q. You can't tell how far?

A. No, sir.

Q. Where does the little spur go off?

A. You might consider it a spur.

Q. Where does it strike the Tennessee River?

A. Down below Slick Rock.

Q. About how far?

A. I don't just know; a good piece. It runs past what they call Stiff Knee Gap; and it runs into the river.

Q. It strikes the river first down about the Big Slick Rock?

A. Yes, sir.

Q. Then the Hangover there, from the junction of the Big Fodder Stack and the Hangover, describe as near as you can the course of that towards the river.

A. It runs, I think, in a northeasterly direction.

Q. That would be off to the right from that junction point?

A. Going north towards the river.

Q. And how near to the river does it go?

A. Well, it goes, you might say, the way I look at it, it comes down to the river.

1846 Q. About three quarters of a mile isn't it the spur that goes off of it, and isn't it the spur that reaches the river?

A. The spurs run off of it.

Q. Describe that Hangover in its approach to the river.

A. The Hangover is a pretty rough peak, and what gives it the name of Hangover there is a place on top that gives it the name.

Q. But you don't quite understand my question, I think, Mr. Muller. When you leave the junction there of Big Fodder Stack and Hangover Stack, south of the river. That is about how far from the river—nine or ten miles, isn't it?

A. I don't remember how far it is.

Q. You know the point I mean. I am asking you now, if the Hangover ridge, if you so call it, when it leaves that point doesn't circle a little bit off to the right?

A. I don't think it does much. It looks—the top of the ridge looks like there is some pretty bad gaps between it and the river.

Q. In other words, it is up and down?

A. Yes, sir.

Q. It is not a continuous ridge?

A. It is a continuous ridge, but it has got gaps in it; it makes a water shed.

Q. It makes a water shed in different directions?

A. It is a continuous ridge, but it has got gaps in it.

Q. And your recollection is not very vivid, Mr. Muller, whether it runs a little around in going towards the river?

A. No, sir.

Q. Well, there is a basin there called the Slickrock Basin, between those ridges, of about three and a half or four miles?

A. Yes, sir.

Q. Isn't there a spur that comes down between the Hangover and the Fodder Stack towards the river?

A. Well, there is that spur that comes down in the forks of the Slick Rock.

1847 Q. Well, I am now talking about a point above the mouth of Slick Rock and beyond it, where the spur of the Hangover reaches the river; between those points isn't there a spur that comes off one or the other of those ridges that runs down towards the river between those two points?

A. There are a good many spurs that break off. You can start at the river and go up several spurs and reach the Hangover.

Q. Are there any spurs there that you can go up there between Slick Rock Creek and this bluff and come to the State line, where it comes down to a ridge on Fodder Stack Range?

A. Yes, sir.

Q. Pretty high spur?

A. Yes, sir, pretty high.

Q. And pretty continuous over to the Fodder Stack?

A. Yes, sir, after you get on top.

Q. And that is between the Slick Rock Creek now that I am talking about; the mouth of Slick Rock Creek and the Hangover?

A. Yes, sir.

Q. On this map of yours, that you helped to prepare for this original case, you don't show any of those, do you?

A. I didn't show it.

Q. Why didn't you show any of those?

A. We didn't survey them.

Q. Why didn't you survey them?

A. Couldn't be expected to survey every spur that run off the mountain.

Q. You couldn't be expected to show what, did you say, Mr. Muller?

A. You couldn't be expected to make every spur that run off the mountains.

Q. It isn't customary to do that, you think, in making surveys or plats?

A. No, sir.

Q. Will you read that down on the bottom there?

(Counsel referring to map of witness.)

A. (Witness reading from map.) "Map of leading ridges, Slick Rock Basin, Little Tennessee River and North Carolina Line, Monroe and Blount Counties, Tennessee."

1848 Q. What leading ridges—I mean, it shows the leading ridges, then?

A. Yes, sir.

Q. I want to call your attention to a spur just south of the Little Slick Rock Creek. Is that of any importance on this map?

A. Yes, sir.

Q. For what reason?

A. It was a large spur, and I wanted to get the topography of it.

Q. But you didn't want to get the topography of those that I have been calling your attention to?

A. It was a larger spur.

Q. You didn't carry the State line as you surveyed it thirteen years ago, did you?

A. No, sir.

Q. It had no pertinency then to the state line as you surveyed it?

Q. We were hunting for the State line.

Q. This spur over here to the East of the Slick Rock, how have you got that marked on the map? If not marked, describe what that is?

A. This is the line that we ran at the—this is the line that we ran out on top of the spur.

Q. And that is the Hangover ridge?

A. Yes, sir.

Q. Now, I understand you to say, Mr. Muller, and agree with Mr. Hale, that this map of 1821 is fairly accurate as to distances between the main points and courses; that is, general courses. Is that correct?

A. Hardly.

Q. Explain, then, in what respect it is not correct.

A. The courses are not such as you can lay down on the mountains.

Q. Well, take it from a point, say that mile above the Tennessee River, and look down to the junction of the Hangover and Big Fodder Stack ranges. Doesn't that line show the general course between those points, now, without regard to the small angles and without regard to the mountain ranges as a line upon the map. Isn't it approximately correct?

A. No, sir, it is not approximately correct. This map 1849 shows nothing but a few things. It shows, from the shading, that they run the line on the top of the mountains on the course that they crossed the Tennessee River when they came to it, and that they run above the headwaters of Tellico River.

Q. You recognize that as a point, didn't you that junction of the Big Fodder Stack and the Hangover as a point to be reached, no matter where you run the line in detail. You recognize that, don't you, as a point to be reached?

A. Yes, sir.

Q. And you recognized it as a point to be reached, as a point a mile north of the river?

A. Yes, sir. That is the leading ridge.

Q. Where do you get the idea of a "leading ridge?"

A. We got the idea from the map of the Commissioners that made the report to the State of Tennessee and the State of North Carolina.

Q. This map shows that it crossed the river at some point, the Tennessee River, does it not, where there was a water course on the other side?

A. The map shows that it crossed close to a water course.

Q. Could that be anything other than the Slick Rock Creek or the Cheoah River?

A. No, sir.

Q. Must be either one or the other of those streams?

A. Yes, sir. But they have pictures the Cheoah River further down than where it actually is.

Q. It couldn't be, if this map is correct and you have to go by the Commissioners—assuming that you have got to go by the Commissioner's map, and take objects that it points out plainly and that you don't have to guess at it—it couldn't be that the map lays down a line that crosses the river at a bluff, as stated by you in your former testimony?

A. I don't consider that map as a guide for the State line. It is not correct, and when it is not, it is of no use. It only showed these three things: that it followed the course of the mountain, and that it crossed the river when it struck it, and that it run above the head-
waters of Tellico River, and it included them in the State of
1850 Tennessee. That is all the use that it is. It is not a guide for a surveyor.

Q. If this is a map of the report of the Commissioners who had in charge the survey, and accompanied their report, and was one of the documents that the Legislature had before it when it confirmed that report, and that map shows that the State line crosses the Tennessee River in the immediate neighborhood of the mouth of a stream, which you say couldn't be other than Slick Rock Creek or the Cheoah River, I want to ask you if, taking this map to be correct, it could be possible that that State line passed the river at that bluff that you speak of which connects with the Hangover Range?

A. You are calling for a bluff. You probably don't understand me there. The whole bank of the river is very steepy and bluffy.

Q. Didn't you say in your former testimony, Mr. Muller, that when you went down to the river at about a half mile above the mouth of Slick Rock, where you found trees blazed, that just across the river from there there was a bluff?

A. You might call it a bluff.

Q. Didn't you call it a bluff?

A. Possibly did.

Q. And this is the bluff that is connected with the Hangover by a range from the river over to Hangover, as a part of Hangover?

A. Yes, sir.

Q. I say, if this map is an efficient map and it shows that that line crossed the river, the Tennessee River, at the point or immediate vicinity of a stream on the other side, is it possible that you could

rive from this map a line crossing the river at that bluff that I
eak of?
A. Well, the bluff extends from the mouth of Cheoah all the way
wn to the mouth of Slick Rock. It is all steep and bluffy.
Q. Didn't you have a point in that bluff where you said that the
mmissioners must have crossed the river and continued their sur-
y on the south side in your other testimony?
A. I don't remember what language I used. I can just tell you
we continued on the course on top of the bluff and then took
51 the leading ridge from there.
Q. And then continued the line along the top of the bluff,
st opposite the point where you reached the river, down to these
es along the river?
A. Yes, sir, that is the idea.
Q. Now, I want to know by this map, which shows that that line
sses the river, or in the immediate vicinity of the mouth of some
eam, whether you could show by this map that it crossed the river
d continued over the bluff that you speak of?
A. Couldn't show anything from that map, because we found it
s incorrect.
Q. And then you can't show that it crossed by that bluff?
A. No, sir.
Q. Then it is a matter of fact that these Commissioners made a
port to the State Legislature, which was confirmed by the Legisla-
re, that nobody can locate it?
A. Yes, sir.
Q. That nobody can locate it by that map? That is right is it?
A. Yes, sir.
Q. If that bluff extends all the way down the river, from Slick
ock Creek and Cheoah River, why didn't you plat that bluff in
at map of yours?
A. We surveyed the Cheoah River afterwards.
Q. How long afterwards?
A. Fourteen years.
Q. That is about now how long?
A. Thirteen years, probably, it was.
Q. That is about now?
A. A year last spring.
Q. After the commencement of this subsequent part of *of* this
se?
A. Yes, sir.
Q. And why did you survey the Cheoah River at that time,
52 when you had never attached to it any importance in refer-
ence to that State line before?
A. We had never had this map in this part of the country.
Q. Until when?
A. Until I went to Nashville and had a copy made.
Q. When was that?
A. That was several years ago. I don't remember just what time
was.
Q. Well, at that time, when you surveyed by the old map, I am

not talking now with reference to the production of this map, you didn't consider the Cheoah River as having had any importance in connection with the State line?

A. No, sir.

Q. Do you remember when you testified here a few weeks ago stating that a stranger coming there would find it more convenient to cross that river near the mouth of Cheoah?

A. Yes, sir.

Q. That there was an eddy there?

A. Yes, sir.

Q. Did it strike you then when you were testifying that the Cheoah was easier to cross from a point 200 feet below there by following those blazed trees, a more convenient way of going on to that ridge than any other?

A. No, sir.

Q. What did you say that then—what difference would there be between a stranger coming there and a surveyor going there?

A. There wouldn't be any difference. When we find a river we try to find a place to get across.

Q. As a surveyor you do that?

A. Yes, sir.

Q. What do you do with your line?

A. We leave our line and get opposite to it and then go ahead.

Q. The point about what I want to know is: If that is
1853 true, what difference is there as to the place you get across the river the easiest if you carry your line opposite on—from a place opposite where you stopped. Why don't you say you go across and carry it on?

A. I thought I was asked the question where I crossed.

Q. You were asked the question if a stranger came there what would strike him as the most convenient way in getting across and reaching the Hangover?

A. Have you ever seen the river? You wouldn't cross it any where except where that eddy is.

Q. You don't understand what I am asking you about. The point is—you were asked—let me ask the question. Do strangers get across the river any more easier than surveyors?

A. A stranger don't perhaps cross the river more easier than a surveyor.

Q. You say that the point easiest to cross it was two hundred feet below there. What difference does it make to strangers?

A. I don't know what you are asking about.

Q. I am asking this: You said awhile ago that within these last few months you surveyed the Cheoah River, and you testified here a few weeks ago that a surveyor trying to reach the main ridge would find it more convenient to cross down the Cheoah River and below up the ridge from there to the main ridge of the Hangover. Now in view of what you say from the Cession Act the stranger had followed the main ridge. It struck me there was some pertinency there in reference to the State line. If there wasn't it had no reference to this case; if it did I want you to explain.

A. A surveyor wouldn't go away from his line. He would go
k to it. A stranger would cross the line there; he wouldn't go
wn the river and go back, but he would take one of those spurs
d climb the mountain.

Q. Well, you can explain to me then if a stranger would do that,
uldn't anybody do that?

A. A surveyor wouldn't. A surveyor would stick to his
54 line.

Q. Would he cross the river right on his line?

A. You wouldn't cross the river when it was impossible to cross it.

Q. Was it possible to cross it there at that bluff?

A. It is so rapid there you couldn't cross it in your boat and I
n't think you could wade it.

Q. And you say in your examination that it wasn't safe to cross
at point except about two hundred feet from that point?

A. Yes, sir.

Q. It wasn't any safer to a surveyor than any stranger?

A. A surveyor would go up there and cross and go back to his
ne?

Q. And is it not a fact that you don't remember those questions
d you don't know what Mr. McCroskey was after?

A. I am not a good expert—I couldn't read in Mr. McCroskey's
ce and say what he was thinking about.

Q. And now when you came down on the river there you had
thing to go by except to pick out a main ridge did you?

A. That was all.

Q. And you picked out the Hangover Ridge as the main ridge
d your idea was, and you was positive that they went right across
ere with their line?

A. Yes, sir.

Q. And then along the Hangover?

A. Yes, sir.

Q. Now, you say a person not able to cross the river there would
down the river where it was safe to cross and then go back to his
ne?

A. Do it in this case.

Q. And you can carry a line very well where it isn't safe to go?

A. Yes, sir.

Q. You can carry your line right straight across but in going
er the ground you might have to go around to get across?

A. Yes, sir.

Q. There isn't anything inconsistent then having refer-
855 ence to this line, this state line, that is run on this map of
1821 from that point a mile north of the river, notwithstand-
g they couldn't get there on a straight line as run on this map to
e mouth of the Slick Rock and had to go down the river to get
ross, there isn't anything inconsistent then in running their line
raight to the mouth of Slick Rock?

A. I think it is very inconsistent. I think to take the line off
e river and running down the creek is very inconsistent.

Q. I am talking about taking the line a mile down the river and the line is inaccessible to that going down the creek?

A. The ground is not inaccessible to a surveyor.

Q. What do you mean by that?

A. The surveyor can walk over it and run a line over and sight over it.

Q. Run over what?

A. Solid earth below it.

Q. What range—what ridge I mean would be run over there—that Lester ridge you mean?

A. If it was a straight line.

Q. How do you get that point a mile north of the river there to that line of Slick Rock, would you go over Lester ridge or not?

A. If I wanted to go from the top of the hill to Slick Rock Creek I would go straight if that was the objective point.

Q. You would run a straight line on the map?

A. Yes, sir.

Q. Now, taking this map of 1821, Mr. Muller, from a point there, the mile circle, the mile back at the south bank of the river, the Tennessee River, at the mouth of Slick Rock Creek as shown here. What is the general bearing for about seven miles as shown by the mile circles? What is the direction and angle?

A. It would be northeast.

Q. And going in the other direction?

A. Southwest.

Q. And how many degrees?

A. I couldn't tell unless I had my instruments.

1856 Q. For this purpose, you could make that parallel there with the north point there, the line?

A. I could make it approximately.

Q. Did you ever see Mr. Burns' map that was used in this case when he was testifying?

A. Well, I believe I have seen it, I am not sure.

Q. Well, he makes that general direction south forty-four degrees west. Do you know whether that is correct? Or about correct?

A. I don't — whether it is or not.

Q. Could you measure it on your map—starting at that point, I mean?

A. Starting at that point going south down the river?

Q. South of that seven mile point, shown by the mile circles on that map. Could you pick out the same spot on your own map?

A. I don't know whether I could or not.

Q. Well, after you leave that seven miles for the next three miles, do you know?

A. I wouldn't undertake to say unless I had some instruments.

Q. What instruments would you require to give us that data?

A. I would require a ruler.

Q. Anything else?

A. Yes, a parallel ruler and a protractor.

Q. Just a parallel ruler and a protractor would enable you to get it from the map, would it?

A. Yes, sir. Might have to have a little daylight to be exact about it.

Q. Can you do that, Mr. Muller, can you give us the information from your own map? Take the point at which we say that that State line crosses the Tennessee River at the Slick Rock. Take the point at which you say it crosses and give the bearings for seven miles distant from that. Can you do that?

A. The general direction would be about south twenty degrees west to just approximate it.

Q. Can you make it any closer?

1857 A. I can't see these marks well at night. (Witness referring to marks on protractor.)

Q. Did you ever submit the map of 1821 to the tests of your instruments to ascertain the bearings there?

A. Yes, sir.

Q. For those seven miles?

A. We tested the bearing on both sides of the river.

Q. I am asking you now for seven miles to a point crossing the Tennessee River at Slick Rock, assuming it to be Slick Rock, for seven miles. Did you test the map by your instruments for the general bearing of that map?

A. No, sir.

Q. What distance did you test it?

A. We tested it back on the line. Right here we tested it. (Referring to map.)

Q. State the point where you mean, Mr. Muller, "right here" doesn't mean anything when you get it in the record?

A. From the river to where the Lester Ridge takes off to the north of the river.

Q. Will you test it on the south side of the river? I mean did you test it on the south side of the river?

A. Yes, sir.

Q. How far.

A. I think it was three miles.

Q. And that is the only test you made of that, the only distance that you tested south of the river, was it?

A. I think so.

Q. On that map of 1821, Mr. Muller, you notice that that line south of the river runs about seven miles from there to there (indicating on map) in one pretty straight line and general direction, and then it takes a very decided turn, almost at right angles. Did you test that for the general courses from the river as far as that seven miles at all?

A. We tested the course on the map you might say of 1821 running up Slick Rock Creek, and it wouldn't fit the bearings nor the distances.

1858 Q. What I am asking you, Mr. Muller, is from that point on the Tennessee River where this map shows that it crosses assuming that to be Slick Rock up to where it takes a very decided abrupt turn to the left as you look away from the river. Did you

test that line for general direction and course there for that seven miles as it is laid out on this map?

A. No, sir.

Q. Did you start here at all at the end of those seven miles, where it takes that abrupt turn that I speak of, and over to the left where it takes another abrupt turn, and it straightens out again, did you make any test of that for general direction?

A. No, sir.

Q. In coming here now to this second point where I said it turns and straightens out and runs a considerable distance down here, did you make any test of that for general direction?

A. I surveyed that country.

Q. Please answer my question. I am asking you a definite question. Do you know whether you tested this here (pointing to map) at that time, this portion? I mean when you took this map out here from this second point where it makes an abrupt turn from the south to the southwest, did you make any test of that distance to see where the general course of that line was on this map?

A. Tested that last spring.

Q. After you got this map?

A. No, sir. I found out that the map was incorrect, in all its particulars, in all its bearings and distances, and I paid no further attention to it.

Q. And that you did without a test of your instruments on those general lines?

A. I noticed that several years ago.

Q. You mean you could tell by your own eye that it was incorrect?

A. I could tell by my field notes.

Q. And that was run prior to the time before you knew of
1859 the making of this map and then when you had this map you could see by your own eye without having this map that it was totally incorrect.

A. Yes, sir.

Q. It never struck you, did it, that that creek which we have designated as the Slick Rock Creek, may have been incorrectly drawn instead of the state line, did it?

A. Yes, sir, it struck me that it was incorrectly drawn.

Q. In what respect?

A. It seems that this creek which you call the Slick Rock is intended for Cheoah River. It makes exactly just such a turn right here (pointing to map) as Cheoah River makes, and it is laid down as a much larger stream than Slick Rock Creek is.

Q. And in about the same position, is it?

A. It makes the same turn.

Q. And it is in about the same position—starts at the same place?

A. As I said before, I think it is sketched in too low down for Cheoah River.

Q. And it is your impression that the state line should cross at the Cheoah River?

A. You want me to say something which is untrue, and I am not

going to do it. I don't recognize this map as showing Cheoah River, and I am not going to do it. It is not a good guide for a surveyor.

Q. But if that map fixes the line and that stream there is the Cheoah River, all I am asking you, Mr. Muller, if according to this map the state line don't cross at the Cheoah River?

A. According to this map it would, but I don't recognize this map. It was found to be incorrect.

Q. From what you have said you couldn't tell us, then at all the bearings, if any are shown by this map for say three miles and seven miles from the river over to the left as you look south, could you?

A. I could by taking a great deal of pains. I could tell the bearings on the map.

1860 Q. You haven't took any pains heretofore to find out the bearings?

A. Yes, sir.

Q. I understood you to say you hadn't tested that before to see what the bearings were?

A. I didn't go on the ground to test the bearings on this map, but I took the bearings before I went to the mountains to make the survey or test it on the ground. I took the bearings with the instruments of all those distances and bearings as near as I could get them and tabulated them and I had them when we made the survey and made the investigation.

Q. Didn't you say a while ago that you didn't test the bearings except three miles from the river?

A. No, sir.

Q. I am talking about this map. I am not talking about the ground?

A. You are not making yourself clear. I told you I found when I applied the instruments to it it would bear out these bearings, and I made the bearings all along from the Sixty-ninth mile post. I took all these bearings and tabulated them and gave them to Mr. Hale, and he made some tests from those bearings that he took from this map.

Q. And he made the test on the ground?

A. Yes, sir.

Q. Now, leaving the ground off, taking simply this map, did you endeavor with your instruments to test the bearings of this line as shown on this map south of the river?

A. Yes, sir; but I only tested it with the compass three miles up Slick Rock Creek.

Q. Now, what is the bearings of seven miles on the map?

A. I couldn't tell you without I had my notes.

Q. But you have the bearings up the river seven miles from that point?

A. Yes, sir; I have the bearings clear past the Slick Rock Creek.

Q. Then you could, from papers that you have at home, give us the bearings as shown by this map from that seven miles to that elbow, and the next three miles?

1861 A. I don't know just how far I took them up this way.

Q. You don't remember?

A. I don't remember how far I took them.
Q. That was only last spring, wasn't it?
A. Yes, sir.
Q. Will you produce those notes that you have got off of those bearings?
A. I think Mr. Hale has them.
Q. Well, if you have got them will you produce them?
A. Yes, sir; if I have got them I will produce them.
Q. If you haven't got them and if he has them with him, you will get them from him?
A. Yes, sir.
Q. How soon could you have those, Mr. Miller, if you have got them?
A. I haven't got them. I could get them again off the map.
Q. If you haven't those notes so that you can produce them, you can get them off the map?
A. I can do it?
Q. Will you do it, just to accommodate us?
A. I suppose so.

Mr. McCroskey: We object to anything of that kind as representing the opposite parties. My exception is that, postponing this matter, it might delay the trial of this cause. I think now you understand what I mean.

Mr. Matthews: Will you make that if you can't find those notes—will you make that calculation for us tomorrow morning or by tomorrow morning?
The Witness: Yes, sir.
Q. Could you tell us where you would land if you started at the mouth of Cheoah River and went south forty-four degrees, west for seven miles, and then south nineteen degrees, east for three miles—could you tell us where you would land?
A. No, sir.
Q. Don't you know you would land on the Santeekle Creek?
A. No, sir.
1862 Q. Now, in the morning will you give us the courses as laid down on the map of 1821 for the seven miles? I want the course for that and the course for three miles over there, and then take your own map and take your own starting point on the south bank of the river, and give us the courses for the corresponding distances on your own map. Will you do that for us?
A. Yes, sir; I will.

Mr. McCroskey: Will you furnish the instruments to the witness so that he can make the plat?
Mr. Matthews: I don't want a plat—just the results.
Mr. McCroskey: Will you furnish the instruments to get the result?
Mr. Matthews: Oh, yes, sir.
Mr. Matthews: We are through with this witness until we get that information.

O. W. MULLER.

The taking of depositions in this case was resumed on this January 9, 1909, at 9:00 o'clock a. m., pursuant to adjournment.

O. W. MULLER.

Continuation of cross-examination by Mr. MATTHEWS:

Q. What did you do with the map of 1821, in answer to the question that I put to you last night, and which had reference to ascertaining the courses of the first seven miles of the state line, as shown on the map of 1821, up to the elbow, where it strikes off to the east, and for the next three miles after leaving the last mentioned point?

A. I have not done anything; only I assisted Mr. Hale in getting those bearings. I could not see well enough by this light.

Q. What did you do with reference to the plat that you and Mr. Hale jointly prepared, and which was used in the original case (known as the Hale map, and called: "Map of Leading Ridges") in ascertaining the courses starting from where you crossed the
1863 river and up to the Hangover, and thence to the junction of the Hangover and Big Fodder Stack?

A. I did nothing with it, except to assist Mr. Hale in getting those things, on account of the same reasons that I gave before—I could not see well enough.

Q. Then the work that was done in answer to these questions was done by you jointly with Mr. Hale, and his figures would be your figures?

A. Yes, sir.

And further deponent saith not.

O. W. MULLER.

1864 Now supplementing that testimony, the defendant, State of Tennessee, here calls on said O. W. Muller for further examination as follows:

O. W. MULLER, being first duly sworn, deposed and said:

Direct examination by Mr. MCCROSKEY on behalf of the Defendant, State of Tennessee:

Q. 1. What is your present age, Mr. Muller?

A. 76 years old.

Q. 2. Since your two depositions have been taken in the original case of Hebard v. Belding and the bill of review case, have you been upon the ground or territory involved in that suit making an investigation?

A. Yes.

Q. 3. I mean now particularly with reference to the Slick Rock country—you have been there since that?

A. Yes.

Q. 4. In addition to the investigations made in the original suit what further investigation have you made of that territory?

A. I have been to the North side of the river and reviewed that line that run down the Little Tennessee River and followed on that line down around the way we run it to Jenks Knob.

Q. 5. On the investigation and examination made since your depositions were taken in the original cases—the original case and the bill of review—did you find anything to change your opinion of what you stated in your other depositions?

A. No, sir.

Q. 6. State whether or not your opinion and your judgment in regard to the true location of the State Line has been confirmed?

A. Yes.

1865 Q. 7. Passing that and the junction of the Hangover and the Fodder Stack ridges going Southwest, is there any difficulty in locating the State Line for the next 8 or 10 miles?

A. No sir, it is undisputed there.

Q. 8. Well even if it is not undisputed, is there any difficulty in locating it, taking the report of the commissioners?

A. There is no serious difficulty in following the main ridge of the mountain, to not go off wrong on a spur.

Q. 9. Are there any broken ridges liable to take them off to the left or right?

A. Yes, there are some broken ridges.

Q. 10. Can you call attention to any particular ridges that they might follow?

A. I don't know that I can name them.

Q. 11. You know where Stratton Meadows is located?

A. Yes.

Q. 12. Have you been there?

A. Yes.

Q. 13. How often?

A. Been there several times.

Q. 14. Describe the topography of that particular locality?

A. There is a cleared field there and it's rather a gap in the mountain, not very low.

Q. 15. Any streams head near the Meadows?

A. There is some water there.

Q. 16. What streams?

A. Don't know the name of it.

Q. 17. I am speaking now of the John Stratton Meadows?

A I don't know anything about the other one.

Q 18. State whether or not the water, a stream rising there, empties into Tellico River going further West?

A. I think there is a stream that runs the other way, my impression about it.

1866 Q. 19. What does it empty into?

A. I don't know.

Q. 20. You know where Santeetlah Creek is on the North Carolina side?

A. I don't know where it is. I have been on it. I suppose certain water at the Meadows there runs that way into the Santeetlah is my information.

Q. 21. As I understand you, that Stratton Meadows is on the State Line?

A. Yes.

Q. 22. Passing there going Southwest is it rising going from the Meadows Southwest?

A. It is rising.

Q. 23. How far do you go before you get on top of a ridge again?

A. I couldn't say how far, some distance, perhaps half a mile.

Q. 24. How far is it from Stratton Meadows to what is called the "County Corners", or the head of what they insist to be the State Ridge?

A. Couldn't say.

Q. 25. Well about how far is it?

A. I don't believe I can state the distance.

Q. 26. You know the State Ridge, do you?

A. Yes.

Q. 27. You know the Rough Ridge?

A. Yes.

Q. 28. Are you familiar with the ridge running around the headwaters of Tellico River?

A. Yes.

Q. 29. How often have you been in that section of the country and examining that particular territory?

A. I don't know how many times, perhaps a half dozen times.

Q. 30. About how long since the first time you went in there for the purpose of examining the country and surveying?

A. The first time I was in there was about 25 years ago.

Q. 31. You remember the purpose of your visit?

A. To look after entries of land belonging to the Stevenson and Wetmore heirs.

1867 Q. 32. Where were those entries?

A. They were along the ridge on the West side and South side. Some of them lived on the North Carolina side claimed by North Carolina and had occupants over on the other side of the ridge, on the West side.

Q. 33. State whether or not some entries that you were looking after were in the territory now in dispute?

A. Yes.

Q. 34. You were looking after them also, were you not?

A. They were the ones I was looking after.

Q. 35. State whether or not they attorned to Wetmore and Stevenson as claimants of the land at that time?

Mr. POSEY: State of North Carolina objects on the ground that the declaration of those parties would not be competent—their attornment to anybody is immaterial and irrelevant and incompetent.

A. The most of them claimed to be in North Carolina.

Q. 36. Did any of them attorn to Wetmore and Stevenson at that time or acknowledge their rights?

A. Yes.

Mr. POSEY: Same objection.

Q. 37. Now Mr. Muller, have you been in there since that time surveying for the purpose of locating the State Line?

A. Yes.

Q. 38. How often have you been in there for that purpose?

A. I have been three times, perhaps more.

Q. 39. First, Mr. Muller, I wish you would describe the topography of the country and the territory in dispute at the head of Tellico River and the surrounding ridges. Give all that you think would intelligently explain the situation?

A. The ridge which makes the water divide is very crooked, runs first Southeasterly and then runs along and turns on toward the Southwest. The ridge that is called the State Ridge runs
1868 more in the direction of the State line before you strike it. Rough Ridge runs about the same direction but turns a little more to the west. At Laurel Top, a little South of Laurel Top, there is rising ground, I believe they call it Grassy Knob, which I suppose is probably on State Ridge. From there the State Ridge sinks gradually, but very little change in its ground except about two miles from the junction from Laurel Top where it rises and then slopes down to Tellico River. The other ridge, which is the divide of the waters, runs around the headwaters of Tellico, it makes some high knobs and some gaps. Some of the gaps are tolerably deep, but it is a continuous ridge, water divide to where Jenks Ridge runs off from it.

Q. 40. Now describe more definitely the relative position of Rough Ridge and State Ridge?

A. Rough Ridge turns a little more Westerly than the State Ridge and is much more prominent than it is and don't grind down so gradually as State Ridge does to the Tellico River, rather bluffs off down there at Tellico River. On the other side of the Tellico River where a mountain comes on the other side going up that mountain there is a ridge called Jenks Ridge that comes down about a half mile above where State Ridge strikes the Tennessee River and comes down close to the mouth of a creek called Tipton Creek. It is pretty rough and steep.

Q. 41. Now going back to Rough Ridge, a little more definite in your description. State whether or not it terminates at Tellico River below or above State Ridge?

A. It terminates below and further West.

Q. 42. About how far below State Ridge?

A. I suppose about three quarters of a mile or a mile—I haven't measured it, guessing at that.

Q. 43. And the State Ridge, as I understand you gradually slopes down to the river, while the Rough Ridge maintains its height further and is more abrupt in its descent to the river? Is that correct?

A. That is correct.

Q. 44. Did you examine for State Line marks on either one of those ridges, or both?

1869 A. Yes.

Q. 45. What did you find on either one of them?

A. Found some trees hacked with three hacks on the State Ridge and where the contention of North Carolina and the State Line we passed a Holly that had some letters on it.

Q. 46. That is on the other side of the river?

A. Yes.

Q. 47. I am talking about the State Ridge?

A. I found some marks, side lines with three hacks. I don't remember seeing any fore and aft marks there of State Line marks with two hacks and a blaze.

Q. 48. At what part of the ridge did you find those marks on State Ridge?

A. I found some, I suppose, about a third of the way about a mile where it leaves the divide of the waters. I think I saw one about a half a mile where it runs down to Tellico River.

Q. 49. Were any of those marks that you found along there, in your opinion, State Line marks?

A. I couldn't say. I didn't see them blocked. There were three hacks on a tree.

Q. 50. What was your impression at the time as a surveyor at the time you investigated, going down there, as to whether they were State Line marks or not?

A. My impression was that they had been made for State Line marks, but then not being on the State Line as described by the report of the commissioners I couldn't say.

Q. 51. Did you examine Rough Ridge?

A. No sir.

Q. 52. Well I will ask you if there is any road or trail down the State Ridge to the river?

A. There is a wagon road pretty much all the way.

Q. 53. Whereabouts was these marks that you saw with reference to the wagon road, and how far from it?

A. Close to the wagon road and on the West side of it.

1870 Q. 54. How far from the top of the mountain?

A. Close to the top, the wagon road runs on top most of the way.

Q. 55. State whether or not that has been frequently traveled for many years?

A. Has that appearance.

Q. 56. By both wagons and pedestrians?

A. Yes.

Q. 57. How far from Tellico River does the State Ridge give out or terminate?

A. I think about 6 chains, about 12 rods.

Q. 58. What is the character of the ground between the termination of the ridge and the river?

A. There is a little bottom covered up with brush.

Q. 59. Now how wide is Tellico River?

A. 2 chains.

Q. 60. 2 chains?

A. Yes, 66 feet, we measured it.

Q. 61. Describe that river, Mr Muller—size, water, and all that?

A. It is not a very large river, full of rocks, boulders, and the

water is not very plentiful in it when I have seen it and it looks in rainy season it would be pretty high.

Q. 62. State whether or not you have seen the bed of the river full of water for the 66 feet wide?

A. I have seen water in it pretty much across the whole bed of the river and it is in walls and checked by boulders like those mountain streams are.

Q. 63. As I understand you the bed of the river between the two banks is 66 feet wide and the water runs fast between those two banks between boulders?

A. Yes, it runs between the rocks. You might cross it on rocks by jumping from one to the other. We had to go across it on a pretty long tree.

Q. 64. Was the river up at that time?

A. No sir.

1871 Q. 65. Now passing the river continuing on Southwest, what is the character of the ground immediately after you cross the river and on for some distance?

A. A little piece it is still bottom, flat, and then you strike bank that is probably 8 or 10 feet high to climb up and then it slopes gently on the mountain side up to a place where Jenks Ridge commences about.

Q. 66. Now from the river up to where Jenks Ridge comes down I will ask you whether there is any defined ridge there or a slope there?

A. Just a slope there, not a defined ridge, but it is my recollection where Jenks Ridge comes down there is a little branch that runs across the line as claimed by North Carolina.

Q. 67. Between the slope of Jenks Ridge and the river did you make search for State Line marks?

A. Yes.

Q. 68. Did you find any and, if so, describe what you did find?

A. I found a Holly tree that had some letters and figures on it. It had a figure 8 and then something else after the 8 that might be construed to be a part of the figure 5 or the figure 6, or maybe something else, just a *steam*, you couldn't tell, and part of a letter M, three forms of the letter M.—the left hand prong and the next stroke and a piece of the next one, and when I was first along there, there was a tree close to it that had some hacks on it, three hacks on it I think, and the last time I was there the tree was gon

Q. 69. What else did you find indicating State Line marks?

A. I don't remember of seeing anything else indicating the State Line.

Q. 70. That Holly that you have just described is the first tree that you found with any marks on it after you left the river?

A. Yes.

Q. 71. And passing that and going up Jenks Ridge and up to the top did you find anything?

A. No sir.

Q. 72. Nothing to indicate the State Line?

A. No sir.

1872 Q. 73. Now passing on after you got to the top of Jenks Ridge and continuing on to this junction with the main ridge did you search for marks?

A. Yes.

Q. 74. Did you find any?

A. No sir.

Q. 75. Are there any there?

A. Didn't find any, searched for them, but didn't find any.

Q. 76. If I understand you Jenks Ridge juts off from the main ridge and runs back Eastwardly to Tellico River?

A. Jenks Ridge is a spur of the main divide and runs down. I don't know whether it is Eastwardly or not.

Q. 77. About what course?

A. I think it is rather Southwesterly.

Q. 78. Well it would be running more South than anything else from where it starts off?

A. From the main divide running down toward the river?

Q. 79. Think that would be a Southwestward course?

A. Yes.

Q. 80. Here it is right here.

A. It would run a Northeasterly course.

Q. 81. After leaving the main ridge it runs a Northeasterly course to Tellico River?

A. Yes.

Q. 82. Now if I understand you, it terminates at the river about a half mile above the foot of Tipton Ridge on the other side?

A. Yes.

Q. 83. Have they any connection with each other?

A. No.

Q. 84. Would they indicate at all that there is a ridge cut in two there?

A. No sir.

Q. 85. As I understand you, you found no other tree on the South side of the river from there to the main ridge with marks on it?

A. Don't remember any.

1873 Q. 86. Did you give that Holly a thorough investigation, Mr. Muller?

A. No sir.

Q. 87. Did it have any other marks than you have described?

A. Not any. That tree is a mere shell now. The first time I saw it it was only a shell, found some dead wood and that dead wood has decayed more since then.

Q. 88. After an examination of that tree as a surveyor and from your experience and knowledge of marks, etc., what is your opinion as to that being a State Line mark or something else?

A. From the figures and lettering on that tree, that is on it, it looked as though it was intended for something of that kind, but there was no chance of telling the age of that kind of a tree, a holly or beech is of such a nature in the bark that you can't tell the age of it, and it was only marked in the bark, even if it had gone to the wood you couldn't tell because the wood was decayed and it was

hollow. It might have been when I first saw it 15 or 20 years old or it might have been 100 years old, I couldn't tell the difference.

Q. 89. From its locality and position or anything, was there any reason for judging that to be a State Line tree?

Mr. POSEY: I object.

A. It was not on the crest of the ridge as indicated by the report of the commissioners and I could not recognize it as being on the State Line.

Q. 90. The State Line calls for a main ridge and thence with the main ridge, etc.?

A. Yes, and then the extreme height.

Q. 91. And with the extreme height thereof to the extreme height of the Unaka Mountain?

A. Yes.

Q. 92. Could it be on the extreme height of the main ridge there?

A. No sir.

Q. 93. From its character is it such a tree as could be located as a State Line tree?

1874 Mr. POSEY: The State of North Carolina objects—it is for the witness to state where it is located, and for the Court to say whether it is on the State Line or not.

Q. 94. You know that North Carolina claims the State Line runs South of the river passing the holly and on up to Jenks Ridge?

A. Yes.

Q. 95. State whether or not after leaving the Holly it crosses a branch?

A. Yes.

Q. 96. Before it reaches Jenks Ridge?

A. Yes, it crosses a branch close to the place where the line strikes the edge of Jenks Ridge.

Q. 97. Then as I understand you when leaving the South bank of Tellico River and following up the general slope of the side of the ridge and Tellico you come to this marked Holly. Passing that ag-in you cross a branch and strike the base of the side of the Jenks Ridge and following on up that to the top of Jenks Ridge, as I understand you, is the way North Carolina claims the line runs?

A. Yes, that is the way they claim it runs.

Q. 98. Now Mr. Muller did you go around the headwaters of Tellico River following the main divide?

A. Yes.

Q. 99. Describe that in your own way?

A. It is a ridge open by some gaps, good many gaps, and a good many knobs, some of them tolerably high and steep and at the beginning after it leaves Laurel Top it sinks down to what they call Mitchell Licks, sinks considerably to it, rises again and continues on a continuous ridge clear around to Jenks Knob and then on the same ridge unbroken only by gaps.

Q. 100. Is there any question in your mind, or could there be any question in the mind of any competent surveyor that that is the main divide?

A. There is none in my mind, and I don't see how any one else could call it anything eles than the main ridge.

1875 Q. 101. Is the State Ridge the main ridge?

A. No sir. State Ridge what is called the State Ridge is a spur of the main divide of the waters.

Q. 102. State whether or not you found in your investigation around this main ridge any State Line mark or any marks that would indicate State Line marks?

A. I didn't see anything but one probably a half mile or such a matter before we came to Jenks Knob where the line is undisputed, I saw two trees that had the marks on them, one of them was hollow that we couldn't see when it was made and another seemed to be marked in the bark and we didn't cut into it.

Q. 103. Describe those marks?

A. They were fore and aft trees, two hacks above a blaze.

Q. 104. Now indicate on the map, or state on the map filed as Exhibit No. 1 to Hale's deposition where those trees were located?

A. I don't believe I can do that.

Q. 105. About how far from the head of Jenks Ridge?

A. One of them I think was about a half a mile somewheres about here. (Indicating on the map.)

Q. 106. Where with reference to Tipton Knob were they?

A. One of them was Southwest of Tipton Knob, between Tipton Knob and Jenks Knob.

Q. 107. And the other one?

A. And the other one was probably half a mile further up here, perhaps in this gap, I can't be positive about that.

Q. 108. You remember Tipton Gap or Horshaw Gap, where was that other one with reference to these?

A. Between them and Tipton Knob. I didn't pay very much attention to the location.

Q. 109. One of them was in the bark and you couldn't tell much about the age and the other was in a hollow tree and you couldn't get the marks?

A. Yes, that is correct.

Q. 110. Now Mr. Hale, in your investigation—I mean Mr.

1876 Muller now in your investigation and after your thorough investigation of this locality where did you yourself in your own mind locate the State Line between North Carolina and Tennessee and the lands in dispute at the headwaters of Tellico River?

A. Located on the crest of the ridge running around Laurel Top, Haw Knob, Mitchell Licks, Buffalo Stamps, Peckerwood Ridge, Cold Spring Gap and McDaniel Bald, and on the same divide Big Cove Spring, Tipton Gap and Jenks Knob.

Q. 111. That would carry you around the headwaters of Tellico River then?

A. Yes.

Q. 112. Now Mr. Muller in your own way, give your reasons for locating it in that way?

A. According to the report of the commissioners the line between the States was located from the Tennessee River, thence to the

main ridge along the extreme height thereof, and there was nothing said about leaving the main ridge but keeping on that main ridge which I construed to be the main water divide, and I located the State Line along that divide crossing no water until you strike the turnpike road, the Unaka Turnpike.

Q. 113. State whether or not this main ridge from the Tennessee River around as you have indicated it is well defined?

A. Yes, it is well defined.

Q. 114. Natural objects?

A. Yes.

Q. 115. In your mind as a surveyor what influence will natural objects have over artificial marks in giving the true location?

A. The report of a surveyor of a line mentioning the natural objects would be the first rank. Natural objects rank as first evidence, then after that monuments well defined, but natural objects are such as can not be overlooked or removed, but monuments can be moved, but natural objects takes the preference, and rivers and mountains take the preference when they are well described and identified.

Q. 116. It says crossing the Tennessee River at 65 miles.
1877 Is there anything in that to indicate how they advanced in locating the line?

A. That indicates when they came to the Tennessee River they crossed it.

Q. 117. You mean directly, or what?

A. Yes, directly.

Q. 118. How did they approach the Tennessee River from your investigation of the line on the North side?

A. Well you come down a spur of the mountain about right angles to the river.

Q. 119. The Hemlock on the North side, which you described in your original deposition as being a fore and aft and marked as a fore and aft. State how it pointed—right directly crossing the river, or how?

A. Right directly crossing the river.

Q. 120. And directly opposite on the other side of the river, what did you find?

A. Two large spurs on the other side of the river.

Q. 121. Of the mountain, or natural objects?

A. A peak over there and big mountain. And for some distance higher up it was bluffy, but going further up we struck a spur coming down from a main ridge.

Q. 122. What was that main ridge?

A. That main ridge took us passing Sourwood Gap.

Q. 123. The ridge known as the Hangover Ridge?

A. Yes.

Q. 124. Now state whether or not you were guided in your investigations by the report of the commissioners in undertaking to locate the line around the headwaters of Tellico River as well as elsewhere?

A. Yes.

Q. 125. And did you find it crossing any streams by following the calls of the commissioners?

A. No sir.

Q. 126. Have you been to the Turnpike at the 101 mile tree?

A. Yes. There is a turnpike but no tree there.

Q. 127. You know where it is?

1878 A. Yes.

Q. 128. Any difficulty about locating it?

A. No sir, but there was no old monument there.

Q. 129. Now, Mr. Muller, taking the 101 mile tree at the Unaka Turnpike and reversing your call following back over the course, state whether or not you would then have any difficulty in locating the line and how would you locate it around the Tennessee River?

A. I would locate it on the same back track. There would be no difficulty except that a person might be mistaken in going off on the wrong spur. No difficulty in determining the water shed and the main ridge, because it is much higher than anything else.

Q. 130. If they took off or went off the right spur, would they soon find their mistake and get back on the proper course?

A. When I started off a spur I soon found my mistake and got back on it.

Q. 131. What is the relative size of Tellico River at the foot of State Ridge with Slick Rock Creek?

A. It is larger.

Q. 132. How much larger?

A. Probably three times as much water in it.

Q. 133. About how long is Tellico River from the foot of the State ridge back to this—its source or head?

A. Five or six miles.

Q. 134. How many tributaries up there, or tributaries to the river, about how many?

A. I don't know how many, there is several.

Q. 135. You know how it compares with Cheoah River?

A. It is wider, I believe, but I don't know that it has as much water in it, as Cheoah River. I don't believe it has.

Q. 136. How does it compare with Citico and Abrams creek?

A. Citico at the mouth is larger than Tellico where the line crossed it, where we crossed it. Higher up it is not as large. Abrams creek is less.

Q. 137. Now passing on from the 101 mile tree—have you run the line from there to the Hiawassee River?

1879 A. Yes.

Q. 138. Have you seen Caney Creek?

A. Yes.

Q. 139. What size is that?

A. Good deal less than Tellico.

Q. 140. One-half as much or one-third?

A. About one-third as large as the Tellico River.

Q. 141. Have you surveyed the line continuously through from Hiawassee River to the Georgia State Line?

A. No sir.

Q. 142. How much of that line have you run through there?

A. I have run about four miles.

Q. 143. I understand you have run the line from the 101 mile tree to the Hiawassee River?

A. Yes.

Q. 144. Then about two miles in addition to that?

A. About four miles below the Georgia Line.

Q. 145. In all you have run something like 6 miles of the State Line South of the 101 mile tree?

A. Yes.

Q. 146. Find any marked line along there?

A. Yes.

Q. 147. Any trouble about locating?

A. Not much. When I was down at that point the trees were all gone. It was in the Ducktown region and the trees were all dead.

Q. 148. Why are the trees gone?

A. They have been killed by the sulphur fumes from the copper mine.

Q. 149. The fumes from the copper smelters killed the trees?

A. Yes.

Q. 150. And killed the State Line trees also?

A. Yes. I found one tree that was a pretty fair tree, and there is another thing that kills the trees wood is scarce in that country.

Q. 151. And as a matter of fact most of the State Line trees
1880 are gone in that section of the country?

A. Yes.

Q. 152. Mr. Muller, if you have been locating a line which crossed Tellico River and making your report thereof, state whether or not you would have so stated in your report?

Mr. POSEY: State of North Carolina objects as to what he would do as not competent.

Q. 153. Now what is the custom of all surveyors, all competent surveyors, in noting streams or any natural objects?

A. The custom is to note every thing along the line in crossing the rivers or mountains or crossing or going on the crest of mountains and anything of that kind the surveyor would report it in his report where he would notice it.

Q. 154. Mr. Muller, from the report it appears that there were six commissioners, three on the part of North Carolina and three on the part of Tennessee, in addition two surveyors, and in addition to that a number of chain *bearers*, markers along the line. I will ask you to state if they had crossed the Tellico River or had run up Slick Rock Creek or run down the Tennessee River on the North side from the Hemlock to the mouth of Slick Rock or near that point, would they have forgotten or overlooked the fact that they had made these points in their survey and not have mentioned the fact in their report?

Mr. MATTHEWS: We object to that, because this gentleman can not know what the custom was in 1821 in making reports, and the

balance of it is not the subject of expert testimony at all, and it is irrelevant and incompetent.

A. I don't know what those commissioners would have done. I would not have forgotten it. I would have mentioned it.

Q. 155. Well it is possible for them to have forgotten either one of those points?

1881 Mr. MATTHEWS: Same objection to this question as to the previous question.

A. I can't answer that question—some people are forgetful.

Q. 156. You say you would not have forgotten it?

A. No, I would not have forgotten it.

Mr. MATTHEWS: Object to that as immaterial.

Q. 157. Now what would the absence of mentioning running down the river or mentioning down the river or mentioning Slick Rock Creek or mentioning crossing Tellico River indicate to you as a surveyor?

Mr. MATTHEWS: Object to that as immaterial and incompetent.

A. It would indicate to me that they had nothing to do with those things, that they didn't touch them.

Q. 158. Mr. Muller, you have been as I have understood from your original deposition, you have been surveying for 40 years or more?

A. Yes.

Q. 159. From your experience, state what you find to be the characteristics of people in regard to marking trees on ridges or at any other place?

Mr. MATTHEWS: Objected to because not the subject of expert knowledge, and the general experience is incompetent and irrelevant in this case.

A. I have been along with natives that carry a hatchet and they would hack trees along a path very frequently. I suppose when people traveling through the woods they very frequently make trail marks so that they can come back to them, and I have done so myself and marks in the woods of that kind are very plentiful. Find a good deal of that.

Q. 160. State whether the temptation is stronger to mark a tree that has a smooth surface, rather than one of rough bark?

Mr. MATTHEWS: We object to that and because we want to be saved from temptation and because it is not a matter of any expert knowledge.

A. My answer is it don't make much difference whether
1882 the tree is smooth or rough in the bark.

Q. 161. What is your experience in regard to marking names and figures, etc., on the trees?

A. The temptation is very great about that. A great many people

like to see their names in print, and when they can't do that and they see a nice holly or beech they put their name on it and lettering.

Q. 162. What kind of a tree is a holly?

A. Smooth bark.

Q. 163. Easily marked?

A. Yes, and the lettering shows very plainly on it. Hardly ever find a nice beech or holly on the streams that hasn't got some names on it.

Q. 164. Mr. Muller, have you had any experience in locating the line between the Ocoee and Hiawassee Districts?

A. Yes.

Q. 165. What do you know in regard to it from your surveys and in regard to the accuracy of that line and its definiteness?

A. Well hard to locate it and a portion of it we didn't get it located satisfactorily to ourselves. The maps and the field notes that we got were inaccurate and soon found out that they were not to be depended on and we had to throw them aside and use some other means, and in locating a portion of the Ocoee and Hiawassee line the maps of the Ocoee District in regard to a particular point being destroyed and gone we had to get the record of the State grants of the tracts and sections where they put it on the line and make a calculation of it and from the section lines that had been run across we traced in the woods by the mark and the amount of land contained in those sections and we succeeded in locating it close enough to effect a compromise on the balance of it. Very difficult to locate it from the maps and documents that we got from the old surveys on account of the inaccuracies.

Q. 166. From your efforts to locate this line and your experience as a surveyor, state whether or not it indicated unskilled work?

A. Yes, it indicated the unskilled work of surveying and of mapping after they did survey. The maps that we got hold of
1883 were worthless, so far as being a guide, so far as a surveyor was concerned, and I looked at it as a lot of improbabilities.

Cross-examination by Mr. POSEY on behalf of the complainant, State of North Carolina:

X Q. 1. Mr. Muller, you say you went up into the Tellico River in search of the State Line?

A. Yes.

X Q. 2. Who were you representing?

A. In that Hebard law suit.

X Q. 3. I was speaking about the Tellico Country—did Charles Seymour get you to go there?

A. Yes.

X Q. 4. Is he the Charles Seymour that was sworn here the other day?

A. Yes.

X Q. 5. You say you went to search in accordance with the report made by the commissioners to the legislature in 1821?

A. Yes.

X Q. 6. The report of the commissioners calls for running from

the Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain. You think, you say, they run the line according to the divide of the waters as the main ridge according to that report?

A. Yes.

X Q. 7. Did you measure the line from the Tennessee River to the Unaka road?

A. Yes.

X Q. 8. The report of the commissioners is that it is 101 miles. What did you find it?

A. I don't remember how much I found it.

X Q. 9. You were with Hale, you and he measured it?

A. Yes.

X Q. 10. To make it anything near 101 miles or near 100
1884 miles, you would have to go the State Ridge route, wouldn't you?

A. The State Ridge would be a little nearer than the other.

X Q. 11. Did you measure around that other route?

A. Yes.

X Q. 12. How many miles difference then in those two lines?

A. About 5 miles.

X Q. 13. 5 or 6 miles?

A. Something like that. We were the surveyors, we didn't measure them ourselves.

X Q. 14. You were sworn in the case of Stevenson v. Fain?

A. Yes.

X Q. 15. And in that testimony didn't you state that Hale made the measurements and you were along?

A. Yes.

X Q. 16. And didn't the measurements show a difference of 6 or 7 miles?

A. Yes.

X Q. 17. And now you say if you had been surveying that you would have called for this stream if you had crossed it?

A. Yes.

X Q. 18. You say that competent surveyors would call for notable objects of mountains and the streams etc. when they are making their survey?

A. Yes.

X Q. 19. Tell me some notable points around that line where Tennessee contends that line runs—you know where McDaniel Bald is?

A. Yes.

X Q. 20. You know of any other points around there, high points in the mountain?

A. Yes, some high points in the mountain.

X Q. 21. They have local names?

A. Have now. I don't know whether they had names then or not.

X Q. 22. Any of those points called for by the commissioners in their report?

A. Called for the extreme height of the main ridge. That fixes it.

X Q. 23. What does "main" mean—leading?

1885 A. It means a little more than leading, a principal ridge, or the extreme height of the ridge means the water shed.

X Q. 24. You mean this is the main ridge because it is the divide of the waters?

A. It is the highest ground around there.

X Q. 25. Now going from Laurel Top going around to the State Ridge, don't you pass Grassy Gap?

A. Yes.

X Q. 26. Ain't that on State Ridge?

A. Yes.

X Q. 27. Going in a Southwesterly direction don't that lead you right straight on the Unaka road?

A. Yes, but there is a river to cross.

X Q. 28. Then to turn at this figure 5 here on this map or to the place known as County Corners to go around by the McDaniel Bald and these other high gaps and low spurs that you claim to be the main ridge around to Jenks Knob, I will ask you if you don't go down off the State Ridge several hundred feet through a very low gap before you strike any high spur again?

A. Yes, there is a gap.

X Q. 29. How deep is that gap?

A. I haven't got the elevations.

X Q. 30. You go right off the side of the mountain—there is no connection with that and the State Ridge at all—you have to go through a gap to get on high ground at all?

A. Gap at Mitchell Licks.

X Q. 31. How deep is it?

A. It comes down from 5,000 feet to 4,640.

X Q. 32. Now in going by the report of the commissioners, you would attempt to follow a marked line, wouldn't you?

A. Yes, when the marked line agrees with the thing that I consider to be the most important in a survey, which are natural objects.

X Q. 33. Their report says that they marked that line that they run, don't it?

1886 A. Yes.

X Q. 34. Then if they didn't run this line around that pocket there which you claim to be the line by McDaniel Bald, then they never marked it, did they?

A. I don't know whether they marked it or not, I didn't find any marks.

X Q. 35. They say they marked the line they run, don't they?

A. Yes, that is what they say.

X Q. 36. Did Seymour tell you there was no use to hunt for marks around that pocket—that it was just sketched in?

A. I had no such instructions, my instructions were to hunt for marks.

X Q. 37. Now then the commissioners in their report say that the

line that they run is the line shown on the plat attached to their report, don't they?

A. I don't believe they use that language.

X Q. 38. As shown by the plats accompanying their report—"agreeably to the plats." "The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line tree; and mile marked at the end of each mile; agreeably to the plats which accompanies this report, and which said plats and reports are certified by us in duplicate, one for each of said States, in the same words, marks and figures?"

A. I didn't have that part of it when I run that line.

X Q. 39. You didn't have that part of it?

A. No sir.

X Q. 40. Have you seen the plats that they say accompanied it?

A. Yes.

X Q. 41. I will ask you if it is possible to take that map that is there or that plat and reconcile your contention around by McDaniel Bald with that plat?

A. I don't consider it possible to reconcile that plat with anything in that country. It doesn't fit—it doesn't fit it.

1887 Cross-examination continued by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 42. Mr. Muller, is what is commonly called or known as the Unicoy or Unaka Mountain, well known by tradition and local association in that country?

A. Yes.

X Q. 43. Is it at the place designated by Mr. Hale on his map, Exhibit 1?

A. I think so.

X Q. 44. Col. Posey asked you about reconciling this map of 1821 with your location of the State Line around the main ridge surrounding the head waters of Tellico River and you said you couldn't locate it—that you couldn't reconcile that map with anything in that country. What do you understand the map to show even as a sketch around the headwaters of Tellico River?

A. I understand the map to show three things: one is that they run on the crest of a mountain, evidenced by the shading; another one is that when they struck the Tennessee River they crossed it, when they come to it at right angles; and the third is that they didn't cross any water courses, but run around the head of the Tellico River and didn't cross it. That is what that map shows to illustrate the report, but if they pretended to plat it as an exact map of a survey, I think they missed it badly, because it won't fit the ridges that they have depicted on there. The rivers are wrong. They are sketched in. Can tell that by making a survey of it, just a sketched map.

January 5, 1911, at 5:35 P. M. the further taking of proof was adjourned to 9:00 o'clock A. M., January 6th, 1911.

January 6, 1911, at 9:00 o'clock A. M., the further taking of proof was resumed, pursuant to adjournment.

1888 Present:

(For North Carolina:) C. B. Mathews, Esq.; Ben Posey, Esq. (Mr. W. R. Hopkins).

(For Tennessee:) Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

O. W. MULLER, resuming the stand for further examination, deposed and said:

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 1. You were asked on cross-examination if you didn't go into that Tellico Country and make the examination that you have spoken of for Charles Seymour, Esq., representing Wetmore or the Stevensons. Now I will ask you to state whether after this suit was brought you went over the line that is in dispute beyond the Slick Rock and Tellico and made an examination of it at the instance of the Attorney General of Tennessee?

A. Yes.

R. D. 2. Did you make a report?

A. Yes.

R. D. 3. A written report of that examination?

A. I made a written report to the Attorney General of the State of Tennessee.

R. D. 4. I hand you herewith a paper, and ask you if that is the report made by you?

A. This is the original report.

R. D. 5. This is the original?

A. Yes.

1889 R. D. 6. File it as Exhibit No. 1 to your deposition?

A. I so file it.

Mr. POSEY: The State of North Carolina objects to the filing of that report. The witness has been on the stand and can testify to what he found and has testified, and his written report is not competent.

And further this deponent saith not.

O. W. MULLER.

Sworn to before me December 2nd, 1910.

S. E. CLEAGE,
Supreme Court Clerk.

1890 EXHIBIT NO. 1 TO DEPOSITION OF O. W. MULLER.

Hon. C. T. Cate.

SIR: I have the honor to submit to you my report of a partial resurvey and review of the State-line between Tennessee and North

Carolina under the direction of W. D. Hale from Dec. 5 to 19, 1909.

For a full understanding a history of the case may not be amiss.

Fourteen years ago three surveyors Jas. Wilson, W. D. Hale and myself were called upon to make a joint survey and examination of the State line between the States of Tennessee and North Carolina, with instructions to thoroughly examine everything pertaining thereto and to locate said line in accordance with the evidence found in the records and on the ground. We had for our guidance the report of the joint commission as recorded in the codes of said States, the natural objects, the marks on the timber along the line and tradition. In accordance with these instructions we proceeded north of Tennessee River where the line was well defined and undisputed.

We examined thoroughly all ridges that could be called "leading" and in accordance with the report of the joint commission and the marks and monuments located said line on the divide of watershed—crossing Tennessee River between Cheowa River and Slick Rock Creek running thence to the main ridge or watershed by way of Sourwood Gap, Slick Rock Gap—Hangover—Hayo and along the divide to Laurel Top thence around the headwaters of Tellico River to Jenks Knob and along the heights of the Unaka to the turnpike running from Madisonville to Murphy thence to Hiwassee River. The discovery of the original map illustrating the report of the joint commission shows that the line ran on top of leading ridges—watersheds—that it crossed Tennessee river where it reached it and crosses no other water course from Tennessee River to the Madisonville-Murphy turnpike, and, though the courses, distances and river courses do not fit the actual survey, showing it to be a mere sketch map to illustrate the report it confirms the line as located by us.

1891 Such is the history of this case when I was called on by W. D. Hale, Esq., to review the line again.

Accordingly having gone to the line North of Tennessee River on the 7th of December, in company of W. D. Hale and J. L. Williams Surveyors and help we resurveyed the line from Township corner north of the 59 Mile Tree to Tennessee River, finding many trees, formerly noted, mutilated, many gone: Crossing the River reviewed the line to Laurel Top with the same result.

Laurel Top is a prominent Knob on the borders of the ridge that runs around the headwaters of Tellico River; in the 7th Range East of Basis line Ocoee District; second Fract. Township and fifth section nearly half a mile south west from the corner of the Township Forty Rods from this top the divide of the watershed turns to the East and runs around the headwaters of Tellico River by Mitchel Licks, McDaniel Bald, Lovingood gap, Rocky Knob and Jenks Knob.

One spur runs South West from Laurel Top about a half mile and divides into two ridges the northerly one very prominent and broken called Rough Ridge the southerly one a smooth gentle slope with fields on its summit and sides and a wagon road running along its top to Tellico River. This is called State Ridge and has a line marked with three hacks about eighteen or twenty years old. This line crosses Tellico River runs up the mountain passes the celebrated

Holly claimed as a mile tree on this line which has been claimed as the true State line. This Holly marked with M 86 is hollow and decayed inside, hence the age of these marks cannot be determined. On this State ridge line I have never seen any of the peculiar State line marks—two hacks above a blaze—although having made thorough search several times.

On the divide running around the head waters of Tellico River landmarks are scarce. I found one locust marked on one side with two hacks above a blaze very old but only in the bark so the age could not be determined. Another very old but on cutting into the tree found the inside decayed and could — determine its age.

1892 The line from Laurel Top along State ridge intersects the line on the divide of watersheds on Jenks Knob and having arrived there, we suspended work to return.

Respectfully submitted,

O. W. MULLER, *Surveyor.*

Amt. R. R. Fare.....	$1.90
Hack	1.00
14 days service.....	70.00
	$72.90

Please remit to O. W. Muller, Sweetwater, Tenn., R. F. D. # 1.

End of Exhibit No. 1 to deposition of O. W. Muller.

1893 In the Supreme Court of the United States.

No. —, Original.

THE STATE OF *Tennessee*
against
THE STATE OF TENNESSEE.

STATE OF TENNESSEE,
County of Knox:

I, Samuel E. Cleage, Clerk of the Supreme Court of the State of Tennessee, and as such acting as Commissioner to take depositions in the above entitled cause, do hereby certify that the witnesses whose testimony appear in this volume of testimony to-wit, John H. Howard, Ben Posey, Robert T. Quarles, W. D. Hale and O. W. Muller, personally appeared before me in the Supreme Court room at Knoxville on the days stated, and were by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that they did depose to the matters in their respective depositions set forth, and did, as certified to, either subscribe their names in person to said depositions or their names were subscribed thereto by myself under the agreement of counsel for both parties, and did file the exhibits called for in each of said depositions; and that the

ounsel for the complainant State of North Carolina and the de-
ndant State of Tennessee did make the several agreements set forth
this volume of testimony and certified to by me (including the
greement in relation to the testimony of witnesses taken from the
rinted volume of Hebard v. Belding and Hopkins et al. v. Charles
lebard et al., which depositions are included in this volume; and
further certify that counsel for complainant and defendant ap-
eared on behalf of said complainant and defendant as stated in this
olume of testimony.

In witness whereof, I have hereunto set my hand and seal on this
e 26th day of December, 1911.

S. E. CLEAGE,
Clerk, Supreme Court of Tennessee.

94 In the United States Circuit Court, Knoxville, Tenn.

CHAS. HEBARD
vs.
D. W. BELDING et al.

he depositions of W. D. Hale, O. W. Muller and J. K. Wilson,
taken, by consent of parties, at the office of Webb & McClung,
Knoxville, Tenn., on the 12th and 13th days of Oct., 1895, to be
used as evidence for compl't. in the above styled cause.

The witness, W. D. HALE, age 37 years, being duly sworn, says:

Question 1st, by Compl't.: What is your age; where do you reside;
at is your occupation; how long, and how much experience?

A. I am 37 years old, reside in Monroe county, Tenn., and am a
rveyor of 17 years' experience.

Q. 2. State if you were called upon to locate the state line between
nnessee and North Carolina at Slick Rock creek, and near where
ttle Tennessee river crosses said state line; if so, by whom, when,
d did you undertake to locate said line?

A. I was called upon by Charles Hebard, through his attorneys,
locate the North Carolina and Tennessee state line at Slick Rock
ek and where it crossed Little Tennessee river, and in December,
95, and Jan., Feb., and April, 1896, in company with O. W.
ller, of Polk county, and J. K. Wilson, of Blount county, both
rveyors, I attempted to locate said line.

Q. 3. What method did you adopt to learn the true mark indicat-
g the state line, and what is the mark?

95 A. I went something near three miles north of the river,
where the line is undisputed, and followed the line south-
west, tracing the marks to the river, finding the line marked
th two hacks above a blaze. This, I had been informed, was the
te line mark, and by such search, proved the information to be
rrect.

Q. 4. If you have a map or plat showing your work, please file
same as "Exhibit A." to your deposition; who made the map?

A. I made a map of the survey, and it is herewith filed as "Exhibit A," to my deposition.

Q. 5. Please state fully the distance you ran the state line north of Little Tennessee river, the amount of care taken in ascertaining the true line, about how many marked trees you found north of the river, and where did the line terminate at the river?

A. I ran the line 3 and ¼ miles north of the river taking great care to search the ridges, branching off on either side for line marks. I found 22 marked trees, marked with state line marks, and terminating at river ½ mile east of and above the mouth of Slick Rock creek, and opposite where the Hangover lead butts off to the river.

Q. 6. Had you any difficulty in locating the state line north of and to the river, and state how near the river you found the last marked tree, and the kind of tree?

A. I had very little difficulty in locating the line north of the river, and found it plainly marked to within fifty yards of the river bank. The last marked tree is a hemlock, or spruce pine, the bark being well preserved, and the marks plain.

Q. 7. State if you ran other ridges north of the river to ascertain if they had state line marks on them; if so, are they located on the map? Describe or locate them on the map, and did you find state line marks on them?

A. I ran three other ridges and they are shown on the map, shaded with green; the state line is shaded with green and brown. The ridge west of the state line is called the Lester Ridge, and has been claimed to be the state line. This ridge I searched closely for marks, but found none. Those on the east of state line are prominent ridges or spurs, and were searched close but nothing found.

Q. 8. After locating the state line north of the river, what were the first steps taken to locate the south side and at the place in dispute—that is, what ridge or ridges, did you first examine, and why?

A. I first examined the spurs of the Hangover Ridge where they bluff off to the river, because the butt of that ridge is directly
1896 opposite the butt of the ridge on which I found the state line marks north of the river.

Q. 9. State whether or not there was anything in the topography of the country, the elevation and course of the ridges to cause you first to adopt the Hangover Ridge as being probably the state line; if so, describe fully?

A. I was governed to a great extent by the topography of the country south of the river. Looking southwest from the butt of the ridge, north of the river on which the line is marked, I first look for the main ridge and see two prominent ridges—the "Hangover" Ridge and the "Fodder Stack" ridge, of which the Hangover Ridge is decidedly the highest and most prominent. Second, I look for the route to the Hangover Ridge and see a large and continuous ridge reaching from the Hangover Peak to the river, directly opposite where the line is marked north of river. Third—I observe the course. The Hangover and the Ridge to it are a little west of south, while to reach the Fodder Stack Ridge, where it strikes the river, I would have to go northwest down the river one-half mile, and from there nearly due west more than three miles.

Q. 10. What ridge more generally follows the general course of the state line north of the river—the Hangover or Fodder Stack?

A. The Hangover Ridge.

Q. 11. Please state fully your survey up the Hangover Ridge and to where the Hangover and Fodder Stack ridges come together on the southwest, and if any trees were found showing state line mark or anything indicating the state line, give them their locality on the ridges or depressions—state fully all you found?

A. I surveyed the Hangover Ridge, commencing opposite the marks on the north side and running up the ridge. ¾ mile from the river I found a black oak marked as a corner, and some slight indications as of marks as if it had been marked as a line tree on the state line. At one mile from the river a double sourwood in a gap, plainly marked "fore and aft" state line marks. At 1 mile and 63 chains, a black oak marked as a corner. At 1 and ½ miles, a chestnut oak with indications of marks, the blaze is plain and one hack can be seen on close examination. Near the chestnut oak is a white oak that bears some indications of marks on the northeast side. At 1 mile and 98 chains (I used a 2 pole chain) a small hickory marked with the state line mark on the east side of the tree. At 1 mile 108 ch., is a Spanish oak marked as a North Carolina corner, and witnessed by six pines. At 1 and ⅞ miles, a white oak
1897 marked with three hacks above a blaze and a very old blaze immediately below the 3 hacks and blaze. Find a marked line running from this point S. 15 W. into North Carolina. At 2 and ¼ miles a black oak on top of a high knob marked with three hacks above a blaze on the north side and two hacks above and one hack below a blaze on the west side. At 2 and ½ miles, a chestnut and two white oaks marked as a North Carolina corner. At 3 and ¼ miles a chestnut oak stump bearing a plain blaze and indistinct two hacks above the blaze; the lower hack is plainer than the upper one. At 3 and ½ miles a small black oak marked with two hacks and blaze, but the marks are too recent for state line marks. At 4 and ⅛ miles, a chestnut with slight indications of marks on the west side. The bark has been burned off of the east side. I found no other marks until after passing "Hangover Rock" 5 and ⅝ miles from the river, and the "Hao" or "Christies" peak, 6 miles from river. At 7 and ½ miles from river I found a small mountain oak marked "fore and aft" with 2 hacks and blaze, but by comparing with marks blocked, find the marks too recent for state line marks. At 7 and ¾ miles from river find a mountain oak 9 inches in diameter, marked "fore and aft" with 2 hacks and blaze. This tree was forked, but the eastern prong has split off, carrying with it the marks, but they still show on the wood and bark; by counting, find these marks too recent for state line marks. A little higher on the tree and deeper in the wood there are some other scars which very closely resemble the state line marks—the blaze plainly showing traces of the axe, but the hacks do not show the traces of the axe so clearly. The diameter of the tree when these scars were made was 2 and ½ inches; it is now 9 inches and of very slow growth. I found no other marks until after passing the junction of the Hangover and Fodder Stack ridges.

Q. 12. On your map, Exhibit "A," which is the Hangover and which the Fodder Stack Ridge, and what is the relative height of the two?

A. The eastern ridge, or the one on the right, looking north on the map, is the Hangover Ridge, and on it will be found, marked in red ink, "Hangover"—"Hao." The western or left hand ridge is the "Fodder Stack" Ridge, and on it is marked in red ink, "Rock Stack," "Big Fodder Stack," and "Little Fodder Stack." The Hangover Ridge is about 800 feet higher than the Fodder Stack Ridge.

Q. 13. Did you continue the State line beyond where the ridges come together, and going southwest, and if so, how far and to what point? Did you find state line marks and if so, how often, on what kind of ground and timber?

1898 A. I continued the survey southwest more than 46 miles from Tenn. river to the Hiwassee river, finding the line marked in some of the low gaps, the marks becoming more plentiful and plainer as I descended into the lower ground near the Hiwassee river. The marks were found on trees that had well preserved bark.

Q. 14. From what you saw, continuing southwest of disputed line, have you now any doubt that you located the true line southwest of the disputed territory?

A. No.

Q. 15. Taking up the Fodder Stack Lead: State if you, with the other surveyors, Muller and Wilson, also run it throughout its entire course as claimed on the part of respondents to be the state line, and if so was your investigation made with as much care as the work done on the other lines?

A. I ran the Fodder Stack Ridge its entire length as so claimed by respondents. The work was done in connection with Muller and Wilson, and was given as much care and attention as any of the work.

Q. 16. State, if the state line had been attempted to be run by North Carolina surveyors, and if so about how long since, by what surveyor, and where did he locate the line at the place in dispute, and what kind of monuments or marks did he make?

A. There had been a line surveyed around the Fodder Stack lead or ridge, said to have been done by one McClelland in 1893; nearly all of the trees on top of the ridge are marked with three chops and stones set up at the end of his miles and marked N. C., and giving the distance to the Unaka Turnpike and to the Cataloochee Turnpike.

Q. 17. Beginning at Little Tennessee River and continuing southwest, same course as Hangover, does your map correctly locate the McClellan survey, and on which side of the Hangover Ridge is located, and how do the two ridges bound or enclose Slick Rock creek?

A. Yes, the map correctly shows McClelland's line on the Fodder Stack lead. It is on the west side of the Hangover lead. The two ridges you followed to their junction on the southwest? What intersouth.

Q. 18. Beginning at Little Tennessee and following the line in

ne general southwest course, state the character of the ridge or dges you followed to their junction on the southwest? What inter- rences, if any, in the way of a continuous or leading ridge; where ou found any marked trees, the character, if any, of the marks, the cation and kind of trees, and give generally what you did find in the way of a state line mark?

899 A. From the river I ascended a steep, rocky butt onto a spur, and followed up the spur 1 and ¼ miles to a ridge called ick Rock Ridge. Following Slick Rock Ridge to a high knob and ¾ miles from the river, and then descended to "Stiff Knee" ap, 3 miles 67 ch. from river. From Stiff Knee Gap I climbed iff Knee Knob 3 and ¾ miles from river, ascending 800 feet in 55 ains, then descending to the Little Stack Lead, to the head of arden Shaft Lead, which is the continuation of the Fodder Stack ead. Then ascending to the Little Fodder Stack 4 and ½ miles om the river. Then descending to Wildcat Gap and passing sev- al little gaps and knobs to Big Stack Gap, 7 and ⅛ miles from the ver. At 6 and ⅞ miles from river, found a meandering line arked with two hacks and a blaze. Upon searching, find these arks to follow trails regardless of the tops or ridges. On blocking nd the marks to be 23 years old. From Big Stack Gap ascend to ig Fodder Stack and descending about ¼ mile from Big Fodder ack and 8 miles from the river find a white oak marked on the rth side with two hacks and a blaze. The marks are very old and ok like the state line marks; cutting in, I find 69 growth of wood etween the scars in the wood and the bark. At 8 and ⅛ miles find chestnut oak with the same kind of marks on the south side of the ee. From the marks on the trees (if line trees) they are fore and ft and should have been marked on opposite side, but no marks ere found, though the bark is well preserved. At 8 and ¾ miles nd a Spanish oak marked with same kind of marks. This tree is arked as a quartering fore and aft; it stands 5 or 6 feet east of the mmit of mountain. These with the McClelland chops and mile- ones are all the marks found on the Fodder Stack lead to indicate state line. The McClelland line is not on a smooth, continuous dge, but on two ridges divided by a deep gap, namely, "Slick Rock" idge, which I strike 1 and ¼ miles from river, and Fodder Stack ad which I strike about 4 miles from river, and Fodder Stack a succession of high peaks and deep gaps, and does not branch off vel from the Hangover lead, but from far down on the side of the Hangover lead.

Q. 19. You mention marks that look like state line marks between and 9 miles from the river. Did you find any other trees with a ke mark off the main top? If so, how many and where?

A. I found a spruce pine with the same kind of mark on a spur out ¾ mile east of Big Fodder Stack.

Q. 20. Could this last mark been made by any one running the main Fodder Stack Ridge as a state line, and if not, why?

900 A. No, for it is not on the Fodder Stack Ridge, but on a spur of the ridge.

Q. 21. After finding the three marked trees as above stated, about

how far is it from the last of these marked trees to where the two ridges meet? And did you find any state line marks along that distance?

A. From the Spanish oak, fore and aft, the last tree found to top of Hangover lead above the junction of the two ridges is 2 and 7/8 miles and I found no indications of a state line along that distance, though there was much old timber with well preserved bark.

Q. 22. Running the 8 miles before finding the three trees with old marks, what was the character of the timber for holding old marks?

A. There were many old trees with well preserved bark and if the state line had ever been marked along that distance some of the trees would have shown the marks.

Q. 23. Describe the Fodder Stack Ridge. Where does it begin and where end? Is it a continuation of the main ridge or mountain dividing the states, or is a branch or spur leading off from the main ridge? Give its general course?

A. It is not a continuation of the main ridge, but a branch of it, branching off from the side of the main ridge about 300 or 400 feet lower than the top of the main ridge and end in the fork of Citico creek 5 or 6 miles west of Little Fodder Stack Mt. From where it leaves the main ridge to its end at Citico creek, its general course is northwest.

Q. 24. Can you follow the main Fodder Stack Ridge and reach Tennessee river? And how do you reach the river if not by following the Fodder Stack Ridge?

A. The river cannot be reached by following the Fodder Stack ridge. I would have to leave the said ridge at Stiff Knee Knob and descend into Stiff Knee Gap and then follow Slick Rock Ridge which would take me to the river more than two miles below the mouth of Slick Rock creek; but if I followed the McClelland's line to the river, I would have to leave the Slick Rock Ridge and go down a spur to the river below the mouth of Slick Rock creek about 150 or 200 yards.

Q. 25. Please explain more fully as to Slick Rock Ridge, as to its prominence and termination, and is it carried out on your map Ex. "A"?

A. Slick Rock Ridge is a low ridge extending from Stiff Knee Gap to a bend in river opposite the mouth of Little Rabbit creek. It is not carried out to the river on the map marked Exhibit
1901 "A" to my deposition. It is not a very prominent ridge, but is much more prominent than the spur down which McClelland ran.

Q. 26. If there is a bend in the river below mouth of Slick Rock Creek, describe it and state at what point in the bend Slick Rock ridge terminates?

A. There is a horseshoe bend in the river below the mouth of Slick Rock creek. The horseshoe is about 2 miles long from heel to toe, the toe pointing north and Slick Rock Ridge butts against the inside of the toe.

Q. 27. Please give general contour of Slick Rock creek basin, the

respective height of ridges on either side, their names, the course and length of the creek, the area in acres?

A. The basin is oblong and is about 6 miles long by 3 miles wide, and traversed its entire length from south to north by Slick Rock Creek. The basin is very rough, being cut up by steep spurs and deep cañons. It is bounded on the north by Slick Rock Ridge and Little Tennessee river; east by Hangover Ridge; south by Hangover and Fodder Stack Ridges, and west by Fodder Stack Ridge. The Hangover Ridge is about 800 feet higher than the Fodder Stack Ridge and about 1,300 feet higher than the Slick Rock Ridge. There is about 12,000 acres in said basin.

Q. 28. Explain if your map by its shading shows the relative ridges, and also explain how their relative height is shown?

A. The map is shaded in terraces or parallel rows of short dashes with the pen; each terrace represents 100 feet of elevation. There are eight more terraces around the Hangover and Hao peaks and Stratton Bald than around the peaks on the Fodder Stack Ridge, showing the Hangover peaks 800 feet higher than the Fodder Stack peaks. Where there are most terraces the shading is broadcast on the map, so that the relative heights may be seen at a glance.

Q. 29. How many families are living in the Slick Rock basin, and where?

A. Five. Two in the north end of the basin on Little Slick Rock creek. One about the middle of the east side and two about two miles from the south end of the basin on the east side. There is one other in the north end and on Slick Rock whom I had forgotten. All of the families except those on Little Slick Rock live east of Slick Rock creek.

Q. 30. State, if the land in dispute is Tennessee, what land district it is in? Your means of knowing, and what experience you
1902 have had in surveying in the Ocoee land district, and what portion of Monroe county, Tenn., the Ocoee district embraces?

A. If in Tenn. it is in the Ocoee Land District. I have surveyed the lines between the Ocoee and Hiwassee Land Districts. Have been familiar with the Ocoee lines for more than ten years. The Ocoee Land District embraces the east and south sides of Monroe county.

Q. 31. State where and the distance Monroe county adjoins the state line of North Carolina?

A. From the Little Tennessee river on the northeast to the Unaka turnpike on the southwest—a distance of about 43 miles.

Q. 32. If you have copies of field notes made by you with Wilson and Muller when you ran the line, please file the same as Exhibit "B" to your deposition.

A. I herewith file a copy of said notes marked "Exhibit B" to my deposition.

Q. Taking the actual survey of the lines as made by you with Muller and Wilson, the marks found, the topography of the country, your experience as a surveyor and also the calls of the commissioners locating the state line, that is "From Tennessee River to the main ridge and along the extreme height of the same to the place

where it is called Unacoi or Unaka Mountain"—where, in your opinion, was the state line located by the commissioners when established in 1821?

A. On the Hangover lead.

Q. 34. What other surveyors were with you in making the survey, and how long at the work?

A. O. W. Muller, of Polk county, and Jas. K. Wilson, of Blount county. We were in all about five weeks doing the work.

Further saith not.

W. D. HALE.

Sworn to and subscribed before me this 13th day of Oct., 1896.

[Seal of Circuit Court.]

J. T. CARTER,
Dep. Clerk.

W. D. Hale, Madisonville, 2 days, 3.00; 90 miles, 4.50 $7.50; paid by Compt.

It is agreed by counsel that counsel for defendants shall have the right to cross-examine the above named witness on the — day of ——, 189–, and to except to the questions and answers made in the foregoing examination in chief and to the deposition generally as fully as if said exceptions had been made at the time each question and answer was made, &c. October 13th, 1896.

T. E. H. McCROSKEY.
Sol. for Compl't.
LUCKY, SANFORD & TYSON.
Sol. for Def'ts.

1903

No. 1056. In the United States Circuit Court, at Knoxville. Charles Hebard against D. W. Belding, et al. Deposition of W. D. Hale. Filed Oct. 13, 1896. J. T. Carter, Deputy Clerk.

W. D. HALE, being duly sworn, deposed on cross-examination, as follows:

On Monday, Nov. 9th, '96.

By consent of all parties, at the office of Lucky, Sanford & Tyson, at Knoxville, Tenn.

By Mr. McGARRY:

Q. 1. What is a state line mark?

A. Two hacks above a blaze.

Q. 2. What is a North Carolina corner?

A. A cross on a tree, witnessed by two hacks above a blaze.

Q. 3. What is a Tennessee corner?

A. Three hacks on a tree, witnessed by either a blaze or three hacks.

Q. 4. How far north of the river did you run to ascertain the state line?

A. About three miles.

Q. 5. To what point?

A. We began north and run south.

Q. 6. What point did you begin at?

A. We began at a point supposed to be the 61st mile tree, on the state line, and ran southwest to the river.

Q. 7. What knowledge did you have that you were then on the state line?

A. Local traditions.

Q. 8. You ran two lines on the north side of the river?

A. Yes, sir; we ran two lines north of the river.

Q. 9. Which line did you run first?

A. The line marked on the map Lester ridge.

Q. 10. How many lines did you run south of the river?

A. Two.

Q. 11. They are known on the map as the Hangover lead and the Fodder Stack lead?

A. Yes, sir.

Q. 12. Which did you run first?

1904 A. We ran parts of both first.

Q. 13. Which line did you complete first?

A. The Fodder Stack lead.

Q. 14. While running that line did you notice and observe any marks, monument or trees indicating a state line?

A. We found some marks and some monuments.

Q. 15. Describe fully what you found?

A. The monuments we found—a stone set up at each mile or about each mile, marked N. C. on one side and figured, purporting to be the distance from the Unaka Turnpike and the Cataloochee Turnpike. In marks we found—trees marked, two hacks above a blaze, about 20 or 30 years old. These marks running with the trails, independent of ridges, and the mark on the tree, two hacks above a blaze, much older, also running independent of the main ridge.

Q. 16. Did you find any tree marked with the state line mark south of Big Stack Gap?

A. We found three trees marked as if with the state line mark, south of the Big Stack Gap.

Q. 17. Describe each of them, where located, and what was done, if anything, concerning them?

A. First was a white oak, the marks on the north side of the tree; that tree was blocked.

Q. 18. State what you mean by that?

A. We cut into the tree above and below the mark, and split out the block between the cuts, taking the mark out of the tree.

Q. 19. Will you kindly locate on this map, with black ink, the location of the blocked tree?

A. I have marked it "blocked white oak." It was already shown by a green dot.

Q. 20. Where is this block, that you took from this tree?

A. It is at Madisonville, at McCroskey's office.

Q. 21. Will you produce it and identify it, and have it marked by the stenographer?

A. I will identify it when produced, by marking it "white oak block." Major McCroskey is present and agreed to produce this block.

Q. 22. Describe the block.

A. The block is about 15 inches long, three wide and four thick.

Q. 23. Did you ascertain how many years' growth between the time the marks were originally made and the time that you took out the block?

A. No, I don't know how to ascertain that.

1905 Q. 24. What, if anything, did you do for the purpose of ascertaining it?

A. I counted the growths between the scars in the wood and the bark.

Q. 25. How many did you find?

A. Sixty-nine.

Q. 26. What did that indicate, if anything?

A. Sixty-nine years' growth?

Q. 27. Between what periods?

A. Between the time the scars were made and the time it was blocked. But I don't know how long it would take for the scar to heal over. There was a sore made on the wood that must heal.

Q. 28. About how long, in your judgment, if you have any on the subject, would it require such scars that you found to heal over, as you term it?

A. It might heal in one year, and it might require ten, owing to the growth of the wood.

Q. 29. Why did you block this tree?

A. To ascertain as near as possible how long these scars had been there, or how long since the marks had been made.

Q. 30. Was this done in consultation with the other surveyors who were present at the time for the purpose you have indicated?

A. It was.

Q. 31. Was the result arrived at, viz.: That there was 69 years' growth of wood between the scars and the bark?

A. We differed somewhat in our count. One counted 67, one 69 and one 72 growths. I gave the intermediate. I don't remember whose count that was.

Q. 32. After you gave the intermediate number, did the other two agree with you in that regard?

A. I don't know that there was any agreement made on it. I only adopted that as safe count. My recollection is that I counted the highest number. I adopted that as a safe count.

Q. 33. Who was it counted 72 years' growth?

A. I think that was my count.

Q. 34. After the others had counted you then adopted the 69 ye[illegible] growth as your judgment?

A. I never adopted that until just now. I only gave that as a safe estimation in my answer to this deposition.

Q. 35. Then, the length of time between the date the tree was blocked and the date the scar was made would be the 69 years' growth, plus such a length of time as it would require the scar to heal?

A. That is correct.

1906 Q. 36. Now, passing on to the next tree containing an old mark (you may refer to your notes if you desire to refresh your recollection), please describe the mark and the tree?

A. The tree is a chestnut oak, and the marks are similar to those on the white oak, but on the south side of the tree.

Q. 37. Is that all the description you can give to identify it?

A. That is all the description I can give, except the copy of the note.

Q. 38. Please mark on the map, Exhibit "A," the location of this chestnut oak, in black ink, marking it "marked Chestnut oak"?

A. I do mark it "marked chestnut oak."

Q. 39. You may read your notes taken on the spot and at the time, the description of the tree and the marks?

A. The course "was north 30 degrees west, 21 chains; at 15 chains a chestnut oak, marked two hacks above a blaze on the south side, very old, only in the bark."

Q. 40. Is that a correct description?

A. It is.

Q. 41. Further down on the line did you find a Spanish oak marked with the same kind of marks?

A. I did.

Q. 42 You may read your notes taken at the time, the description of that tree and the marks?

A. "North 25¼ degrees west, 4 6-10 chains. At 4 chains a large Spanish oak marked as 'Quarter Tree,' with two hacks above a blaze, very old. Also several sets of three hack marks. All very old. The tree stands about 5 feet east of the summit of the ridge."

Q. 43. Is that a correct description?

A. Yes, sir.

Q. 44. Please designate on the map in black ink the location of the tree you have just described?

A. I don't believe I can exactly locate that on the map.

Q. 45. Locate it generally?

A. It is about ¼ mile north of summit of Rock Stack Mountain, marked by a cross and the words "Spanish oak."

Q. 46. What marks, if any, did you find on the Hangover lead, so-called?

A. One mile from the river going south I found a sourwood marked with two hacks above a blaze, as the state line is marked.

Q. 47. Read your notes taken at the time, relative to this tree and the marks?

1907 A. "South 30¾ degrees west, 7 7-10 chains, to a double sourwood, plainly marked with two hacks above a blaze, 'fore and aft.' Both prongs are marked, but there has been other cutting

on the tree that to some extent disfigures the marks." On Jan. 27th 1896, re-examined this tree and made the following note: "On east side of eastern prong of sourwood, find two hacks above a blaze and above this two newer blazes, one run into the other thus, oo. On the south side of same prong are five hacks. On east side of western prong are two hacks above a blaze. The blaze nearly gone. On west side are two hacks above a blaze, the upper hack has been made with two strokes of the axe, and the blaze with two strokes. There is one new hack on the south side of this prong."

Q. 48. Are the hacks and blazes which indicate state line marks usually made with two strokes of the axe?

A. No, sir.

Q. 49. Did you cut into this tree or take any other means of ascertaining the number of years that had elapsed since the hack or blaze was made?

A. No, sir.

Q. 50. This sourwood tree was in Sourwood Gap as marked in your map, Exhibit "A."

A. It was.

Q. 51. In your direct examination you speak of a chestnut oak, 1½ miles, with indications of marks. You may read your notes, please, concerning this tree?

A. "South 17¼ degrees west, 19 2-10 chains, at 8-10 chains, a chestnut oak with indistinct indications of marks, one hack above a blaze. The blaze is plain and one hack can be dimly seen on close examination. If marked, it is a side line tree."

Q. 52. What do you mean by a side line tree?

A. I mean that the line passed one side of the tree instead of through the tree.

Q. 53. The blaze is made more recently than the hack is it not, in your judgment?

A. I can't say that it is. The blaze being larger would show plainer though made at the same time the hacks.

Q. 54. Can you say it is not?

A. I can not.

Q. 55. What do you mean when you say in your notes "if marked it is a side line," etc.?

A. I mean it is doubtful whether it is marked at all or not.

Q. 56. You also noticed a white oak near the chestnut oak we have been describing. Please read your notes concerning that tree?

1908 A. Continuing the last quoted note: "At 6 chains a white oak, with indications of marks (that is, two hacks above a blaze) on the northeast side of tree. Both trees doubtful."

Q. 57. The notes that you have read and in the book which you hold in your hand marked Exhibit "B." W. D. Hale, when were they made?

A. These notes that I read from are copied from originals and compared, and are correct, which originals were made at the time of survey.

Q. 58. Now, we come to the hickory tree. Please read both your notes concerning that tree?

A. "South 9 degrees east, 13 chains, at 5 3-10 chains pass 1 chain west of a small hickory on a broad top, side line tree, marked with two hacks above a blaze on the east side of the tree; the upper hack and the blaze are plain; the lower hack indistinct but still discernible. This tree, shows age, but not enough." I have not the other note with me, but I could give the substance of my observations.

Q. 59. Who was with you the second time?

A. No one.

Q. 60. How did you happen to go the second time?

A. I had other business in that location, and for my own satisfaction made the last examination.

Q. 61. Next—take up the Spanish oak, south of the hickory just described, and read your notes, if you have them?

A. "South 32½ degrees west, 4 6-10 chains, at 5-10 chains a small Spanish oak marked with two hacks above and one below a blaze, on four sides of the tree, and six pines marked with two hacks above and one below a blaze, facing the Spanish oak."

Q. 62. What did these marks on the Spanish oak indicate?

A. A North Carolina corner.

Q. 63. What did the six pines marked as stated in your answer, indicate?

A. Witnesses to the corner tree.

Q. 64. How would that tree have been marked if it were a Tennessee corner?

A. Two hacks or three hacks on each of three or four sides, witnessed by three hacks on the pines, or a blaze on the pines.

Q. 65. How old were the marks you observed on the Spanish oak?

A. From 20 to 30 years old, is my recollection.

Q. 66. Take up the white oak. Read your notes concerning it?

1969 A. "South 43 degrees west, 2 chains to a large white oak 'fore and aft,' marked with three hacks above a blaze on each side and on the east side two hacks plain and very old. A very old blaze below the three hacks, and a blaze on the north side." "Find other trees marked with two hacks running in a line, south 15 degrees west."

Q. 67. Into what state?

A. Into North Carolina.

Q. 68. What do these indicate, if anything?

A. A line running off from a corner.

Q. 69. Take the black oak on top of high knob; read the note?

A. "South 50½ degrees east, 10 1-10 chains to a black oak, marked with three hacks above a blaze on the north side, and two hacks above and one below a blaze on the west side. This tree stands at the head of Caney Branch Ridge."

Q. 70. About — old were those marks?

A. My notes don't state, but my recollection is that they are of different ages, and I don't remember which are the older of the two.

Q. 71. Give a period within which they were both made?

A. I believe both pair of marks were 30 years old, or over.

Q. 72. Next, take up the chestnut and two white oaks—read your notes concerning those?

A. "South 20¼ degrees west, 6 8-10 chains, at 6 5-10 chains a chestnut and two white oaks, marked two hacks above and one below a blaze."

Q. 73. What does that indicate?

A. A corner.

Q. 74. What state?

A. North Carolina.

Q. 75. What do you mean by a North Carolina corner?

A. I mean the corner of a tract of land granted by the state of North Carolina.

Q. 76. You mean a corner of a North Carolina survey?

A. That is what I mean.

Q. 77. Take up chestnut oak stump—read your notes concerning that, please?

A. "South 61¾ degrees west, 10 2-10 chains, at 8 5-10 chains a chestnut oak stump bearing a plain blaze and indistinct two hacks on the northeast side, the lower hack more distinct than the upper one. Can't be positive."

Q. 78. How was the tree cut down?

A. It had broken down.

Q. 79. Did you take any steps to ascertain the age of those hacks?

1910 A. I did not. The stump was hollow. I looked on the inside of the stump to see if it were possible the marks had gone through, but could see no signs.

Q. 80. When you speak of an indistinct hack, what do you mean?

A. I mean an impression in the bark that resembles a hack, but can't be positively stated as a hack.

Q. 81. Take up the small black oak, and read your notes concerning it?

A. "South 3½ degrees west 24 4-10 chains—at 8 4-10 chains a small black oak marked two hacks above a blaze on the west side, very old, but not old enough for state line, and one hack above and one below a blaze above the other marks."

Q. 82. How old, in your judgment, were the last marks described?

A. From 8 to 12 years.

Q. 83. Now the chestnut. Read your notes concerning it?

A. "South 3¾ degrees west 6 chains to a gap, at 3 chains a small chestnut, two hacks above a blaze, rather new."

Q. 84. About how recently were they made, in your judgment?

A. Probably ten years ago.

Q. 85. Did you find any other chestnut tree, and if so, read your notes concerning it?

A. A short distance from the above described chestnut there is a chestnut about which I have the following note: "South 7½ degrees east, 23 5-10 chains. At 1 7-10 chains passed a large chestnut burned on the east side, some indications of mark on the west side."

Q. 86. Did you take any steps to ascertain how old these marks were?

A. I did not.

Q. 87. Did you take any steps to ascertain whether there were marks of the axe, or not?

A. No, sir; nothing more than we could discern in the bark.

Q. 88. You can not swear they were marked, can you?

A. No, sir.

Q. 89. I want to call your attention to the small mountain oak, 7½ miles from the river. You found no trees marked between the one last mentioned, and the one I now call your attention to, did you?

A. None.

Q. 90. Read your notes regarding this one?

A. "South 60 degrees west 7 1-10 chains to a small moun-
1911 tain oak, 'fore and aft,' marked two hacks above a blaze. Marks closely resemble those heretofore blocked and found to be 23 years old."

Q. 91. The mountain oak 7¾ miles from river, 9 inches in diameter. Please read your notes concerning it?

A. My note made in the general survey reads: "South 63½ degrees west 7 8-10 chains to a small mountain oak, two hacks above a blaze. On blocking, find 22 growths from blaze in wood to bark. There are also two hacks above a blaze near the heart of the tree as if it had been marked when only a bush or small sapling. This tree is 8 or 10 inches in diameter and of very slow growth."

Q. 92. What did you do with the block?

A. I left it on the ground because I didn't consider it of any importance.

Q. 93. What did you do with the marks on the inside of the tree that you discovered?

A. I left them on the tree.

Q. 94. What would have been the diameter of the bush or sapling at the time those last mentioned marks were made if ever made?

A. 2½ inches. I measured the heart.

Q. 95. Is it customary to mark bushes 2½ inches in diameter as state line marks in a country as well wooded as this was?

A. From present indications in this locality there was nothing else at that time to mark. I don't know what the custom was.

Q. 96. What else, if anything, did you discover, relative to this tree or sapling?

A. Nothing else.

Q. 97. Is it not a fact that higher up in this tree and deeper in the wood there were some scars which merely resembled state line marks?

A. Those are the scars that are described as being on the heart where it was 2½ inches in diameter.

Q. 98. The hacks do not show traces of the axe?

A. No, sir, they do not. They are mere straight, discolored lines with a slight indenture, but don't show the cut of the axe. The blaze shows the cut of the axe.

Q. 99. Did you find any other marked trees until you struck the state line which is not questioned on the lead from the Fodder Stack lead to the Hiwassee River?

A. No, sir.

Q. 100. Did you have any trouble in following the state line to Hiwassee River after striking the Fodder Stack Lead?

1912 A. We had no trouble following the divide said to be the state line; but sometimes for miles we would not find the marks.

Q. 101. Can you state whether or not you did find the state line, and run the state line to the Hiawassee River?

A. We were on the state line part of the time; I don't know whether we were all the time or not. We were on the divide.

Q. 102. Do you know whether or not you run the state line from the Hiwassee River to the Tennessee River?

A. I couldn't be positive that we ran the state line all the way.

Q. 103. How long have you been surveying?

A. About 17 years.

Q. 104. In what state and county?

A. In Tennessee, and in 3 or 4 counties. My location is in Monroe County.

Q. 105. Were you ever called on before the present instance to do any surveying between the line you ran Hangover Lead and the Fodder Stack Lead, so-called? That is, within this disputed territory?

A. This is the first work I ever did in that immediate locality.

Q. 106. Are the notes that you have read in evidence on cross-examination a correct description of that which you observed at the time?

A. They are.

The taking of depositions was here adjourned until 1:30 p. m.

1:30 p. m. Resumed.

Q. 107. In your direct examination you were asked direct question 33 as follows: "Taking the actual survey of the lines as made by you with Muller and Wilson, the marks found, the topography of the country, your experience as a surveyor, and also the calls of the Commissioners locating the state line, i. e.: 'From Tennessee River to the main ridge and along the extreme height of the same to the place where it is called Unacoi or Unaka Mountain,' where in your opinion was the state line located by the Commissioners when established in 1821," to which you answered: "On the Hangover Lead." Now I ask you, in view of your testimony given to-day on cross-examination whether you pay any attention whatever in forming your judgment, to the lines run by you, viz: The Hangover Lead, or the Fodder Stack Lead?

A. No. My running the lines didn't affect it.

1913 Q. 108. Repeating the first part of the first question and in view of your testimony given on cross-examination, will you state what elements in the question asked you on direct examination, viz: No. 33, you relied upon in forming your opinion?

A. The Commissioners' report and the topography.

Q. 109. If it had not been for the commissioners' report would the topography have been of any service to you in forming your opinion?

A. It decidedly would.

Q. 110. Why?

A. Because it was the most natural boundary, most prominent ridge.

Q. 111. Does not the Hangover Lead at its highest points run east and west instead of north and south?

A. No, sir.

Q. 112. How far east on the Hangover Lead did you go?

A. Only to the Hangover.

Q. 113. How then?

A. Then we turned down the ridge to the river.

Q. 114. Then how do you know that the ridge extending further east from the point where you turned north was not as high as the ridge you followed to the river, or higher?

A. It is as high for some distance, but I don't know that it is a continuous ridge.

Q. 115. Do you know that it is not?

A. No, sir, I don't know that it is not.

Q. 116. Is not this ridge or Hangover Lead running east and west from Hangover Mountain the source of the following streams: Gold Branch, Bear Creek, Barker's Creek, Deep Creek and Rock Creek, all emptying into the Cheoah River?

A. Some of those creeks rise out of this ridge, I don't know whether all do or not.

Q. 117. You never have been over that territory, then?

A. No, sir.

Q. 118. How then can you say that the Hangover Lead extending east and west is not higher than the lead you followed to the Tennessee River?

A. I can't say that, but the rise of the creeks from the ridge does not make or mar its elevation.

Q. 119. Is it not a fact that the different ridges between the creeks that I have named are as high and as continuous as the ridge you have followed down to Tennessee River, all of which extend as foot hills from the Hangover Lead?

1914 A. No; there are two large ridges, one running northeast, a general course from the Hangover, one nearly north from the Hangover; the others are not near so prominent or continuous.

Q. 120. You are now testifying as to ridges you never saw, are you not?

A. No, sir; I am not.

Q. 121. What ridges and between what two creeks did you see?

A. I saw two large continuous ridges, one of them between Slick Rock Creek, and the heads of the creeks you have named, I don't remember what creeks are divided by the other. If there had been other large continuous ridges in there, I would have seen them.

Q. 122. Are not the elevations of the Fodder Stack Lead as high as the elevations on the Hangover Lead between Hangover mountain and the river?

A. No.

Q. 123. What is the difference between the highest points?

A. From the Cold Spring Knob southward to the Hangover is higher than the highest peak of the Fodder Stack Lead. The Cold Spring Knob is about two miles north of the Hangover. And from the Cold Spring Knob to the Hangover, except one deep gap, the ground is continually rising.

Q. 124. What is the elevation of Cold Spring Knob?

A. It is about the same as the Big Fodder Stack. From the Cold Spring Knob to the river the ground is declining and gets lower than the general run of the Fodder Stack Lead.

Q. 125. Is not Big Fodder Stack of as great elevation as Cold Spring Knob?

A. About the same.

Q. 126. Are you at present the official surveyor of Monroe County, Tennessee?

A. I am.

Q. 127. Did you ever before hold that office?

A. Yes, sir.

Q. 128. When and for how long?

A. From 10 to 6 years ago—from 1886 to 1890.

Q. 129. And how long have you been serving this last term?

A. Two years approximating.

Q. 130. In what district is the land in question alleged to be in?

A. In Ocoee.

Q. 131. Where does the Ocoee Land District begin and terminate?

1915 A. The Ocoee Land District in Tennessee extends from the Tennessee River to the Georgia Line.

Redirect examination by Major WEBB:

Q. 1. In your answer to C. E. 124 you say "from the Cold Spring Knob to the river the ground is declining, and gets lower than the general run of the Fodder Stack Lead." When you speak of the Fodder Stack Lead in that connection, do you mean to include the Slick Rock Ridge and the ridge that connects the Slick Rock Ridge with the Lester Ridge at the river?

A. No, sir; I do not.

Q. 2. How does the height of Hangover Lead from Cold Spring Knob to the river, compare with the height of Slick Rock Ridge and the little ridge that connects this Slick Rock Ridge with the Lester Ridge at the river?

A. It is higher. More prominent, i. e. The Hangover Ridge is.

Q. 3. About how high is the little ridge that connects the Slick Rock Ridge with the Lester Ridge at the river?

A. That is simply a large spur. It is not a continuous ridge. I can't give the elevation.

Q. 4. Is it a spur of the Slick Rock Ridge?

A. Yes, sir.

Q. 5. Does the shading on the map indicate the relative height of this little ridge with Hangover?

A. It does.

Q. 6. Does the shading of Slick Rock Ridge on the map indicate its relative height with Hangover?

A. It does.

Q. 7. You have been asked on cross-examination about the ridge leading east from Hangover Mountain. Where does this ridge strike the Tennessee River, that is, how far above the state line as you run it coming south toward the Tennessee River?

A. There is no ridge running east from Hangover Mountain. There is a large ridge running (approximating) about north 60 degrees east, but it don't strike Tennessee River at all. It strikes Cheoah River, or I suppose it strikes Cheoah some 3 or 4 miles above the mouth of said river.

Q. 8. Then did the state line as you run it south to the river connect with this ridge on the Tennessee River, at any point on the Tennessee River?

A. No, except by this ridge that we run and call the Hangover Lead.

1916 Q. 9. Then that would make the connection at the point where this ridge leads off from Hangover Mountain?

A. It would.

Q. 10. When you ran the state line north of Tennessee River you found a spruce pine near the bank of the Tennessee River, north bank, marked as a state line, did you not?

A. I did.

Q. 11. As you run this line, how far was this spruce pine beyond where the Lester Ridge leads off from the main mountain?

A. Do you mean south of the Lester Ridge?

Q. 12. Yes.

A. I think it is about a mile; may be more.

Q. 13. When you ran the line on the Lester Ridge did you find any marks of any kind indicating a state line on that ridge?

A. I did not.

Q. 14. At what point did you begin to find the stone monument and the recent marks about which you have testified on the Fodder Stack Lead?

A. The first monument that we found was on the Slick Rock Ridge between Stiff Knee Gap and the river.

Q. 15. About how far from the river was it?

A. I think about two miles. I ain't positive, however, about that.

Q. 16. About how far is it along the line you ran from the river to the marked white oak on the Fodder Stack Lead which you blocked?

A. Eight miles.

Q. 17. Now, beginning at the river and running along the line as you ran it, up the small ridge to the Slick Rock Ridge, and then continuing along Slick Rock Ridge to Fodder Stack Mountain, then continuing along Fodder Stack Mountain to this white oak, state whether the timber along the line is abundant or scarce?

A. It is abundant.

Q. 18. You have stated that this white oak referred to above was

marked with two hacks above a blaze on the north side of the tree. Was that meeting the line as you run it?

A. Yes, sir, we ran southward to the ridge.

Q. 19. If this white oak had been a "fore and aft" tree on the line would it have been marked on the south side also?

A. It should have been.

Q. 20. You have stated that the chestnut oak which you
1917 found still further south was marked with two hacks and a blaze on the south side. If this had been a "fore and aft" tree on the line, would it have been marked on the north side, also?

A. It should have been.

Q. 21. You have stated that the Spanish oak which you found a short distance from said chestnut oak was marked "Quartering." Was this mark on more than one side of the tree?

A. It was on two sides.

Q. 22. Which two sides?

A. On the south and west sides.

Q. 23. Were the two marks the same?

A. Yes, sir.

Q. 24. This Spanish oak tree you have stated was about 5 feet off the line as you ran it. On which side of the line was this tree?

A. On the east side.

Q. 25. Then did the mark on the south side of the tree indicate to you, as a surveyor, that the line ran through this tree?

A. The marks indicated that the line ran through the tree, but not through the center, but if the line did not run through the tree the marks would indicate that there were two lines cornering in the center of the tree, one entering from the west and one from the south.

Q. 26. Taking the direction from this tree as indicated by the mark on the south side, would that direction lead away from the top of Fodder Stack Lead or toward it?

A. It would cross the top and lead away from it.

Q. 27. I now call your attention to a marked spruce pine tree referred to in your direct examination as being on a ridge leading east from the Fodder Stack Lead. Please indicate by a cross mark on the map the position of this spruce pine tree and mark it "Marked Spruce Pine"?

A. I have done so.

Q. 28. How far is this spruce pine from the top of the Fodder Stack Lead where you run the line?

A. From 200 to 250 yards.

Q. 29. What marks was on this tree?

A. Two hacks above a blaze.

Q. 30. On which side was this mark?

A. It was on the west side. There were some faint marks on the east side, but I couldn't recognize them.

Q. 31. Did those marks indicate a line running along the top of that ridge from where it joins the Fodder Stack Mountain down to Slick Rock Creek?

1918 A. I don't know whether it indicated a line or a trail. I found lots of trails indicated the same way.

Q. 32. How long is that ridge from the top of the Fodder Stack Mountain or lead down to where the ridge terminates at Slick Rock Creek? About how far?

A. It is about a mile, but I wouldn't call it a ridge.

Q. 33. What would you call it?

A. I would call it a spur.

Q. 34. As a surveyor, did you understand the mark on the white oak tree referred to and the chestnut oak tree referred to and the Spanish oak tree referred to and the spruce pine tree referred to, to indicate the state line or to indicate trails?

A. It might indicate either. I don't know which. I find trails marked with that kind of marks all through the woods and I find the state line marked with that kind of marks.

Q. 35. Continuing your line from the Spanish oak above referred to along the Fodder Stack Lead to the Hangover Lead, state whether that line runs through an abundance of timber?

A. It does.

Q. 36. And you have found no marked trees after you passed that Spanish oak up to the Hangover Lead?

A. None.

Q. 37. Running the line as you ran it from the Tennessee River up the Hangover Lead, state whether the mountain top is well timbered up to the Hangover Mountain?

A. Except about a mile and a half it is reasonably well timbered.

Q. 38. Where is that mile and a half located which is not well timbered?

A. Immediately north of the Hangover.

Q. 39. State whether the state line marks on the double sourwood in Sourwood Gap were old or new marks?

A. Very old.

Q. 40. State whether the sourwood is a tree of slow or rapid growth?

A. Of slow growth.

Q. 41. Does it ever grow to be a large tree?

A. No.

Q. 42. You have referred in your cross-examination to a hickory tree on the Hangover Lead about a mile and a half from the river, and you have copied your notes made at the time of your survey. State whether or not you made a subsequent examination of this hickory tree?

A. I did.

1919 Q. 43. Have you with you the notes made on that second examination?

A. I have not but can state the substance of those notes from memory.

Q. 44. State the result of that second examination and whether the result was different in any respect from your first examination?

A. In my second examination of this tree I decided that it is a

"fore and aft" tree, and that it shows as much age as a great many trees that we accepted as state line trees without a question.

Q. 45. What caused you to conclude that it was a "fore and aft" tree?

A. The position of the marks on the tree with reference to the course of the ridge.

Q. 46. State what those marks were and their position on the tree?

A. The marks were two hacks above a blaze. The upper hack distinct, the lower hack not so plain, but still discernible; the blaze plain; and they were on the northeast side of the tree.

Q. 47. Was this tree on the top of the Hangover Lead?

A. Yes.

Q. 48. Was the position of these marks on the tree such as to meet a line run along the top of this mountain?

A. Yes, sir.

Q. 49. Was there any other mark on this tree?

A. None.

Q. 50. As you ran the state line north of the river, when you came down to the point above the river, could you look out in front of you and see the Hangover Lead and the Fodder Stack Lead and the Slick Rock Creek basin?

A. Yes, sir.

Q. 51. Which mountain lying south of the river appeared to the eye to be the main leading ridge going in the direction that you were running on the north side?

A. The Hangover Ridge.

Q. 52. Did the Hangover Lead as you run it, lead off from the river just opposite the marked spruce pine on the north bank?

A. Yes, sir.

Q. 53. To get from that spruce pine to the ridge which leads up to the Fodder Stack Mountain, how far would you have to drop down the river?

A. It is a little over half a mile.

Q. 54. At what angle would this be from the line that you were running when you got to the river?

1920 A. Nearly right angles, not quite. It would be obtuse, not quite a right angle.

Q. 55. In your cross-examination you have spoken of several trees marked as North Carolina corner on the top of the Hangover Lead. State whether this indicated that the North Carolina grants or surveys stopped at the top of that ridge?

A. Yes; the corner indicates the terminus of the line.

Q. 56. You spoke of a line running off from one of those corners about south 15 west; would this direction carry that line to the east of the top of Hangover?

A. Yes, sir.

Recross-examination by Mr. McGarry:

Q. 1. Might not all the marks that you observed on the Hangover Lead be made to indicate North Carolina corners and mere trails?

A. They might be made to indicate corners and trails.

Q. 2. Would not the continuation of a state line where your lines run up the Fodder Stack Lead join with the lines you run as the Hangover Lead in a southern direction be a continuation of the Fodder Stack Lead?

A. No, sir.

Q. 3. What is the next highest mountain south of the Fodder Stack?

A. Rock Stack.

Q. 4. What is the next highest one on the state line south of Rock Stack?

A. Stratton Bald on the state line.

Q. 5. What is the next highest one after that, south?

A. The next highest that I know the name of is Sassafras Knob, at the head of Sassafras Mountain.

Q. 6. Have you got your notes relative to the spruce pine that was marked on the north side of the river?

A. Yes, sir.

Q. 7. You might read your notes concerning that tree?

A. "South 43½ west, 6 3-10 chains, to a hemlock 'fore and aft' marked with two hacks above a blaze. The bark is well preserved and the marks show plain. This tree stands between two branches that are 25 or 30 feet apart, and near a large sweet gum, the gum not marked."

Q. 8. Did you take any steps to ascertain the age of those marks?

A. I did not.

Q. 9. Might they be trail marks merely?

1921 A. I think not.

Q. 10. Will you answer the question?

A. I think not.

Q. 11. How old were those marks?

A. I don't know.

Q. 12. And you don't know who made them, do you?

A. No, sir; I was not there when they were made.

Q. 13. If that was a state line mark, would not those other trees have been made as witness trees?

A. Not necessarily.

Q. 14. Would it have been usual and customary to do so?

A. I think it would.

Q. 15. Did you take any pains to ascertain the age of the marks on the spruce pine standing alone on the ridge or spur south of the river?

A. No, sir.

Q. 16. Do you ever know of a sourwood tree being marked as a state line mark?

A. No; unless the one described in my deposition is such.

Q. 17. And that you don't know?

A. And that I don't know.

Redirect examination by Major WEBB:

Q. 1. Did the marks on the spruce pine north of the river appear to be old marks?

A. Yes, sir; very old.

Q. 2. Did you and the other two surveyors agree at the time that that spruce pine was a state line tree?

A. We did.

Q. 3. Is the line running from the point where the Fodder Stack Lead and the Hangover Lead come together on a continuation of Hangover, or a continuation of Fodder Stack?

A. It is on a continuation of the Hangover Lead.

Q. 4. At the point where the Fodder Stack and the Hangover come together, how much higher is the Hangover than the Fodder Stack?

A. From the top of the Hangover Lead we would have to descend some 200 or 300 feet before we could tell that the Fodder Stack Ridge branched off from the Hangover Mountain. Then some 200 feet further before you could properly say you was on the Fodder Stack Ridge. I don't know how better to answer that.

Q. 5. Then the Fodder Stack Ridge does not reach as high as the Hangover Ridge at that point by about 400 feet—is that correct?

1922 A. Somewhere from 400 to 600 feet.

And further deponent saith not.

W. D. HALE.

Formal Caption and Certificate waived.

WEBB & McCLUNG, *Sols.*
LUCKY, SANFORD & TYSON, *Sols.*

Subscribed and sworn to before me this 10 day of November, 1896.

[Seal of the Circuit Court.] J. T. CARTER,
Dep. Clerk.

W. D. Hale's fees, $9.00 paid by Lucky, Sanford and Tyson.

1923 And afterwards, to wit, on the 13th day of September, 1897, certain depositions of W. D. Hale and H. M. Ditmore were filed in the clerk's office of said court, which said depositions are clothed in the words and figures following, to wit:

In the United States Circuit Court at Knoxville, Tennessee.

No. 1056.

CHARLES HEBARD
vs.
D. W. BELDING et al.

Negative.

Depositions of W. D. Hale and H. M. Ditmore, witnesses for the complainant taken by consent of parties except as to defendant J. W. Cooper, and upon notice as to him, at the office of the clerk of the United States Circuit Court at Knoxville, Tennessee, on the 10th day of September, 1897.

Direct examination by T. E. H. McCROSKEY.

Said witness, W. D. HALE, being duly sworn, says:

Q. 1. Are you the W. D. Hale whose deposition has heretofore been taken in this case?

A. I am.

Q. 2. Since your deposition has been taken in this case state whether or not you have been back to Slick Rock Creek and its vicinity to examine with reference to the state line and its location?

A. I have.

Q. 3. How often have you been back?

A. Twice.

Q. 4. State if you have taken out or blocked out any of the marks noted in your former deposition and the notes filed as exhibits to your deposition at that time, and if so please state which of
1924 the trees or marks you had blocked, giving their location?

A. I blocked the black oak station 94, 121 2-10 chains from the Tennessee River south of the river, and a sourwood one mile 3½ chains south of the river. The sourwood is station 100.

Q. 5. Have you these blocks with you at the present time?

A. I have.

Q. 6. Will you please file the same as Exhibits "A" and "B" to your deposition?

A. I file the black oak as Exhibit "A" and the sourwood as Exhibit "B."

Q. 7. Is it really a black oak or not; explain the same?

A. It is really a red oak. At the time that it was noted as a black oak there were no leaves on the tree. At the time this block was taken out the leaves were on the tree and I could tell it was red oak instead of a black oak.

Q. 8. How long has that been since you first noted it?

A. About 18 months since I first noted it.

Q. 9. At the time you first noted it what indications were there on the bark about its being a state line mark?

A. There was an indistinct upper hack and a plain lower hack and a plain blaze.

Q. 10. When you blocked it out recently was one of the marks missing—if so, explain about it generally.

A. The upper hack was entirely gone—the other marks were intact.

Q. 11. How long since you took these marks?

A. It has been about two months.

Q. 12. Describe the location of the black oak or red oak relative to the lead or the ridge it is on, and whether it was found in the lead or above on the ridge, or where?

A. The black oak is on the ridge leading from the river east of Slick Rock Creek to the Hangover, and on the turn in the ridge. The turn marks an angle larger than a right angle.

Q. 13. State whether or not it is on the same line located as the state line by yourself, Wilson and Muller?

A. It is.

Q. 14. Give the number and designate its location on the map you file with your deposition?

A. It is number 94 in the notes and I mark it on the map "B O. or R. O. Blocked," meaning black oak or red oak blocked.

Q. 15. Have you counted the growths on that black oak or red oak blocked, offered as Exhibit "A" to your deposition?

1925 A. I have repeatedly.

Q. 16. How many growths are indicated from the time the marks were originally made up to the present time?

A. 76.

Q. 17. How many years since does that indicate?

A. 76 years; one growth for each year.

Q. 18. I notice from the block that there are only two notches or marks; please explain in regard to that?

A. When I went to the tree to examine it and block it the upper hack was entirely gone in the bark and, not knowing just where to cut them, cut too low and cut out the upper hack. I found it in the wood, and it exactly corresponds with the depth of the two notches that still show in the wood, but in cutting the block it was cut out but didn't show on the bark.

Q. 19. Is there any doubt about the upper hack showing in the tree and to the same depth as the ones exhibited now?

A. None whatever.

Q. 20. In the tree what do the respective marks indicate?

A. Two hacks above a blaze.

Q. 21. Did you say that this black oak or red oak was one of the trees that yourself, Wilson and Muller, noted as the state line mark in your original survey or investigation of the state line?

A. It is and was noted.

Q. 22. State the object in blocking it out and whether or not it was for the purpose of proving or disproving that it was or was not the state line mark.

A. It was to ascertain the age of the mark, and whether or not it was the state line mark?

Q. 23. What year do the indications show they were marked on the black oak or red oak?

A. 1821.

Objected to by Mr. Tyson on the ground that it was impossible for the witness to determine what year these marks were made.

Q. 24. In referring to the other block marked Exhibit "B" to this deposition, please explain where that was found and what your former notes state in regard to it?

A. The block was taken from a sourwood in Sourwood Gap, station 100, on the same lead as the black oak on Hangover Lead, and it is noted in our notes as a fore and aft tree. I refer you to the notes to show what the marks were.

Q. 25. Now tell what marks are on this block?

1926 A. There are two hacks above a blaze.

Q. 26. Are there any other indications noted about the hacks or blaze or former hacks or more recent hacks or marks?

A. There is a scar in the upper hack that slightly disfigures it—I can not say what made the scar.

Q. 27. Please tell or explain on what part of the upper hack this scar is, and how it appears?

A. It is in the center of the hack and looks as if it might have been a bullet hole or a worm hole and healed over.

Q. 28. Is that indication of the bullet hole or worm hole later or younger than the other hacks or blaze?

A. It is younger than the ax marks.

Q. 29. Please explain a little more definitely why you can say it is younger than the ax marks?

A. Its general appearance, as the appearance or color of the bark, for instance, would indicate that it was younger. The scar rises above the bottom of the ax marks so that if the ax marks had been made at the same time or afterwards there would have been a gap in the ax to have left this rise above the bottom of the mark. The hack made below is straight and smooth in the bottom, showing there was no gap in the ax. This is why I say the scar was made after the ax marks.

Q. 30. Is there anything particular about the lower hack on this sourwood?

A. It has been made with two strokes of the ax.

Q. 31. Explain how you can say it has been made with two strokes of the ax.

A. The bark shows where the edge of the ax struck twice.

Q. 32. Did these original two hacks or blaze penetrate to the wood or sap and if not, how can you tell it did not?

A. The lower hack and the blaze did not reach the sap and I don't think the upper hack did either. If the hacks had reached the wood there would have been a different shaped scar; it would have healed over and left a cat face.

Q. 33. On the sourwood, state whether the two hacks and the blaze are plainly indicated?

A. They are.

Q. 34. State whether or not the part of the blaze in the bark has been chopped or split off and state how it happened?

A. A part of the bark that indicated the blaze was knocked off, sloughed off in cutting out the block.

Q. 35. Have you any method of knowing how long it has
1927 been since the two hacks and blaze were made in this sourwood, and if so, explain?

A. I can not tell how long it has been there but I can tell that it has been there longer than a certain period. In the wood opposite to and corresponding with the scar in the upper hack, indicating a bullet or worm hole, is a snarl showing the depth of the scar in the wood, and there are 61 growths of wood from this snarl to the bark; the two hacks and the blaze are more than 61 years old.

Q. 36. State whether or not the sourwood was hollow and the heart had rotted out?

A. Yes.

Q. 37. How many or about how many growths are indicated from the surface to the hollow?

A. 70 growths from the hollow to the bark.

Q. 38. Did you examine any other marks which you mentioned in your former deposition as indicating state line marks and have you blocked them, and if you did not block them give your reasons for not doing so?

A. I did. I examined a hickory, station 114 but did not block out the marks. It was indicated that the marks did not go to the wood.

Q. 39. What about a chestnut oak stump indicated in your former deposition?

A. The chestnut oak stump is hollow and would not carry the marks in the wood for the required age.

Q. 40. Taking into consideration the location of the ground and the sourwood and black or red oak, the topography of the country and the leading ridge as you say, have you any doubt as a surveyor of the two being the true state line marks?

A. I have not.

Q. 41. State whether or not they are found on the same leading ridge as explained and indicated in your former deposition south of the river?

A. They are.

Q. 42. I will ask you if you knew Thomas G. Harvey who lived in Monroe county, and state whether or not he is now living or dead, and when he died, and how old he was when he died?

A. I knew Thomas G. Harvey. He has been dead something near two years I believe, and was between 80 and 90 years old when he died. About that age. He told me his age but I don't remember now his exact age.

Q. 43. State if in your capacity as surveyor and with a view of ascertaining the survey of the Ocoee Land District, you had a conversation with him in regard to the survey of said district,
1928 and if so what did he tell you if anything about his being along when the Ocoee Land District was surveyed, and in what capacity he was along?

A. I had several conversations with Mr. Harvey about the surveys in the Ocoee District, and he told me he had acted as chairman on the original survey sectionizing the Ocoee District.

Q. 44. What, if anything, did he tell you about the survey in the

Slick Rock Basin, and why they surveyed up the Slick Rock creek and stopped?

A. He told me they were very tired and worn out, and that the ground east of Slick Rock creek was so steep and rough they abandoned the survey, and didn't regard the creek or the limit of their survey as the State Line, but regarded the ridges east of the Slick Rock creek as the state line.

Counsel for defendant excepted to the foregoing questions and answers as to what was said by T. G. Harvey as incompetent for the reason that the party is dead and the evidence is hearsay.

Q. 45. State whether or not since J. C. N. Bogle and H. S. Hayes have made a survey up Slick Rock creek you have been to the creek to examine which they found up the creek and along the Fodder Stack Lead?

A. I have been on the creek to examine the marks since they made their survey.

Q. 46. Did you find the marks as they claim to have found them?

A. I did.

Q. 47. Will you please explain what kind of marks you found there?

A. I found principally three hacks. Most of the trees were marked with three hacks. Some trees were marked with two hacks above a blaze.

Q. 48. Those trees you found marked with three hacks what side of the tree were they on with relation to the creek and about how far from the creek?

A. From 10 to 30 feet from the creek, the marks facing the creek. Some trees, one tree in particular that has three hacks on three sides; two sides would indicate (without the other side) that it was a fore and aft tree; with the third side it would indicate that it was a corner tree.

Q. 49. Did you find any of the trees with three hacks on them on the opposite side from the creek?

A. I don't remember distinctly whether or not I found any facing from the creek, but it seems to me that I did. I can't be positive on this point.

1929 Q. 50. Did you find any with two hacks and a blaze?

A. Yes, sir.

Q. 51. About how many?

A. I think only two on the creek. I don't remember but two on the creek.

Q. 52. At what point on the creek were they?

A. They were within a hundred yards of the river approximately.

Q. 53. State whether or not they were marked as fore and aft or state line, or how?

A. One of them, a cucumber, was marked as a side line; the other, a poplar, as fore and aft. I could not swear positively the marks on the poplar are two hacks and a blaze, for the marks are indistinct.

Q. 54. About how far were the trees with the two hacks and the blaze from the creek?

A. About ten feet I think.

Q. 55. Would these trees marked with three hacks indicate anything to you as a surveyor with reference to the line running up the creek? If so, what do they indicate?

A. From the marks I have seen on the state line north of the Tennessee river and south of this disputed territory and from having blocked these marks, I would think they indicated a land line and not a state line.

Q. 56. State whether or not from first beginning at the mouth of the creek how far you followed these marks up the creek before they gave out or ceased?

A. About one and half a mile.

Q. 57. Then how far is it from the place where they gave out, following up the creek, to where the spur comes down to the creek from the Fodder Stack Mountain?

A. From four to four and a half miles.

Q. 58. Did you find any marks in that distance of four or four and a half miles of the same character?

A. None. I was not over the entire distance. There is about a mile that I did not go over; maybe a mile and a half.

Q. 59. Was the ground along the creek and in this space of four and a half miles at places sufficiently open that marks might have been made as well as the first mile and a half up the creek?

A. I think at least half of the ground was as accessible and as susceptible of marks as where the marks were.

Q. 60. Had you been a surveyor and went on the survey locating the state line between North Carolina and Tennessee and locating it up Slick Rock creek and had marked it for a mile and a half
1930 up the creek would you or any other competent surveyor have left a space of four or four and a half miles unmarked?

A. I would not. They would reasonably be expected to mark it and note it. I don't know what other surveyors would do.

Q. 61. State the character of the ground, its roughness, etc., up and down the creek?

A. There is part of it exceedingly rough; almost impossible to travel. Parts of it can be traveled over readily by a woodsman.

Q. 62. How is it compared with the Hangover Lead up and from the river going south?

A. Well it is far rougher on the creek than on the Hangover Lead.

Q. 63. In your former deposition you located the state line as striking the river, coming from the north, about a half mile above the mouth of Slick Rock creek—is that correct?

A. It is.

Q. 64. If the surveyors in locating the state line had run up Slick Rock creek how would they have reached the mouth of Slick Rock creek from where the true state line strikes the river on the north side?

A. They would have to drop down the river a half mile to come to the mouth of Slick Rock Creek.

Q. 65. How far is it up Slick Rock creek from its mouth to the Fodder Stack Lead—about how far?

A. It is about 8 miles to the Fodder Stack.

Q. 66. Had you as a surveyor been locating the state line and had struck the river a half mile above Slick Rock Creek, thence down the creek to the mouth of Slick Rock creek half a mile or more, thence up the creek six miles, would you have noted this fact in your report as a surveyor?

A. Yes.

Q. 67. Is it always customary for surveyors when they cross a stream or follow a stream to note these facts in their report of their surveys?

A. It is; at least I have so found it.

Q. 68. State whether or not you have found marks two hacks and a blaze on other ridges than the Fodder Stack and Hangover in that section of the country, and if so on about how many different ridges?

A. I have so found it on numerous ridges, I do not remember the number; I expect a dozen ridges other than the Hangover and Fodder Stack.

Q. 69. State the ages of those marks and indications of those marks in other ridges, whether or not they vary in those?

1931 A. They do vary. I have blocked them from 23 years up to 35 years in age.

Q. 70. State whether or not there is a ridge leading from Fodder Stack on the Fodder Stack Lead down to Slick Rock Creek?

A. There is a spur or ridge; more properly a spur.

Q. 71. State whether or not this is the same spur or ridge that you understand Bogle and Hayes located as the state line and on it they claim to have found state line marks?

A. It is.

Q. 72. Have you been up and down that spur or ridge since they made their survey and did you find the marks as they claim?

A. Yes, sir.

Q. 73. State whether or not that spur is an old trail way showing an old or ancient path leading up and down the ridge?

A. There is an old trail on the back bone of the ridge leading from the creek to the Big Fodder Stack.

Q. 74. State whether or not the old trail going east from the foot of that ridge crosses the creek, and if so, where does the trail lead?

A. It crosses the creek at the point of the spur and leads across the Hangover Lead near the Big Fat Gap, and extends on east towards Cheoah river.

Q. 75. State whether or not those trails or a great many of them through that country have been marked with two hacks and a blaze?

A. I don't remember to have traveled any of them but what I could find two hacks and a blaze along. A great many of them I remember had the two hacks and a blaze.

Cross-examination for the defendants except J. W. Cooper:

The said defendants, not waiving any grounds for exception to the foregoing testimony, cross-examine as follows:

By Mr. SANFORD:

Q. 1. Will you please tell which is the upper end of the block filed as Exhibit "A" to your deposition?

A. The one that is nearer square.

Q. 2. How much of the state line north of the river have you surveyed?

A. Something more than four miles.

Q. 3. Have you ever seen the North Carolina statute declaring that three hacks are a side line marked on the state line?

A. I have not.

1932 Q. 4. Well now, running the state line when you have come across trees marked with three hacks, you have taken those to be private lines and not state line marks?

A. I took them to be private land marks.

Q. 5. Is that the reason that you have answered on direct examination that from the marks you have seen on the state line and from having blocked these marks you think they indicate a land line and not a state line?

A. That is the reason, and from having run some lines marked with three hacks for a short distance.

Q. 6. Is there anything in the marks of these trees marked with three hacks that is any different from the marks on the trees marked with two hacks above a blaze? I mean with reference to their apparent age and the instrument with which they were made—are the marks thus made different in any other respect?

A. There is no difference in the marks except they are three hacks instead of two hacks and a blaze.

Q. 7. Did you find any other trees on the Hangover Lead from the river to the junction with the Fodder Stack Lead that showed marks 76 years old or thereabouts, besides the black or red oak and perhaps the sourwood if it is that old?

A. There is a hickory, I can't tell its age because the marks are not cut to the wood south of Slick Rock creek that from the marks in the bark I would judge to be as old as the marks of the red oak or black oak.

Q. 8. Did you block it?

A. No, sir. The marks in the bark don't show that the ax went to the wood. Consequently I didn't block it.

Q. 9. Is that the hickory that you have described before on direct examination?

A. Yes, sir.

Q. 10. You said on direct examination that you have noticed on various trails trees marked with two hacks and a blaze; had you ever, or have you ever blocked any of them to ascertain how old the marks were?

A. Yes, I have blocked several.

Q. 11. Outside of this territory in dispute?

A. Yes, on several ridges.

Q. 12. What ridge for example?

A. On Pine Mountain running east and west from the Big Fodder Stack and on two or three other similar ridges leading into the forks of Citico creek.

Q. 13. Please locate the hickory that you have referred to exactly so that another surveyor would be able to find it?

A. The hickory is at stations 114 and 115 in my notes as filed Exhibit "B" to my deposition, and is one mile ninety-
1933 eight and three-tenths chains south of Tennessee river and forty-five and three tenths chains south of Slick Rock Gap on the ridge running to the Hangover east of Slick Rock Creek. A surveyor in hunting that will only find one hack and a blaze now. One hack has sloughed off since it was first marked

Redirect examination by T. S. WEBB:

Q. 1. When did you first see the hickory tree which you have located south of Slick Rock Gap on the Hangover Lead?

A. On January 17th, 1896.

Q. 2. Did that tree then have marks of two hacks above a blaze?

A. It did.

Q. 3. When did you last see it?

A. I will read my note made January 17th, 1896. At five and three-tenths chains pass one chain west of a small hickory on the broad top of side line marked with two hacks above a blaze on the east side of the tree. The upper hack and the blaze are plain, the lower hack indistinct but discernible.

Q. 4. When did you last see this hickory tree?

A. About two months ago.

Q. 5. When you last saw it the lower hack had *sluffed* off or become obliterated, as I understand it?

A. Yes, sir.

Q. 6. Were these marks in that hickory tree cut to the wood or just to the bark?

A. Only in the bark.

Q. 7. When you say that the lower hack had sloughed off do you mean by that that the bark containing the hack had fallen from the tree?

A. I do.

Q. 8. How large a tree is that hickory?

A. Ten or twelve inches in diameter.

Q. 9. Is it a young and vigorous growth, or old and scrubby?

A. It is an old and scrubby growth.

Q. 10. Is it high up on the mountain in a poor place or in a lower place where the ground is richer?

A. It is on the north face where it is rocky and the ground sterile.

Q. 11. Do the marks on that hickory tree indicate great age, or do they indicate that they were recently made?

A. They indicate great age.

Q. 12. According to your best judgment, would you say
1934 that these marks are as old as the marks on Exhibit "A" to your deposition?

A. Yes.

Q. 13. State whether the hickory tree on the north face of the ridge and in the character of soil that that tree stands in would attain a large growth?

A. It would not a large growth in that character of soil on any face.

Q. 14. What is the character of the other timber in that sterile spot near this hickory tree?

A. It is a poor, scrubby growth.

Q. 15. At this point where this hickory tree stands is it on top of the main ridge or on a slope leading up to the main ridge?

A. It is on a steep slope of the main ridge.

Q. 16. How near to the top of the main ridge?

A. It is on the immediate back bone of the main ridge, but it is not the steep part where the back bone runs up steep.

Q. 17. You have stated heretofore in your cross-examination that you had blocked out some other trees which were marked with two hacks above a blaze along trails in the mountain side, what age did you find these marks to be which you so blocked out?

A. From 23 to 35 years of age varying.

Q. 18. Do these trails along which you found these marks run along the state line as claimed by the other parties to this suit or across these lines, or how do they run?

A. Some of them run along the state line as claimed by both parties, some run across the state line as claimed by both parties.

Q. 19. State what three hacks indicate as a private land mark in Tennessee surveying?

A. Some of them indicate section lines. I frequently find lines marked with three hacks, especially in the Hiwassee District, some in the Ocoee. I find land lines of regular surveys in running with section lines marked with three hacks.

Q. 20. In Tennessee surveying do the three hacks indicate a corner or a line?

A. It is owing to their position on the trees.

Q. 21. Can you tell what the three hacks indicate in a North Carolina survey or private lands?

A. I can not.

Q. 22. Have you ever found any trails on any ridges running from the Fodder Stack westwardly which are marked with two hacks above a blaze?

1935 A. I have.

Q. 23. Those trails so marked would be running away from the state line as claimed by both parties, would they not?

A. Yes, sir.

Q. 24. You have spoken in your deposition of a cat face appearing in a tree mark—please explain what you mean by a cat face?

A. In marking a tree, when the axe reaches the sap or wood of

the tree it heals over and makes a scar different from the scar made by the axe in the bark. In surveyor's parlance we call that a cat face.

Q. 25. Please examine the bark on the broad end of Exhibit "B" to your deposition near the top which appears to be a slit running lengthwise of Exhibit "B," and state whether that is what you call a cat face?

A. It is what we call a cat face though it was not made by an axe; I think it was made by a bullet.

Recross-examination by Mr. SANFORD:

Q. 1. Did you not at the time you made your survey in January, 1896, enter in your note under your description of the hickory as to age you have decided "this tree shows age, but not enough"?

A. I did.

Redirect examination by T. S. WEAR:

Q. 1. What did you mean by the expression in your note book "not enough"?

A. At that time I did not think the tree showed enough age but I have since twice examined this tree and have changed my opinion.

Q. 2. Do you think now that the tree and the marks indicate age enough to take the marks back to 1821?

A. I do.

W. D. HALE.

Filed Sept. 13, 1897. J. T. Carter, deputy clerk.

1936 The witness J. K. WILSON, being duly sworn, says:

(Questions by complainant.)

Q. 1. What is your age, where do you reside, what is your occupation, how long and what experience? State if you were called upon to locate the line between North Carolina and Tenn., near Slick Rock Creek, and near where Little Tennessee river crosses said line, and if so, by whom, and did you undertake to locate the line?

A. 45 years. Maryville, Blount County, Tenn. Land surveyor and real estate. I have been in the field surveying for 11 years and in that time have done a great deal of surveying in the mountains of Blount county. Yes; by T. E. H. McCroskey, attv., of Madisonville, Tenn., and I undertook the work.

Q. 2. What previous experience had you in locating the state line between North Carolina and Tennessee, and if so, how far from the line in dispute, and what is the true state line mark?

A. My previous experience in running the state line between North Carolina and Tennessee has been in surveying lands along said state line, where there is no dispute as to where said state line is. In doing so, I have run the state line some 32 to 34 miles eastward from line in dispute. The state line mark is two hacks, one above the other, and then a blaze immediately under the lower hack, thus: $\overline{\cdot}$

Q. 3. Had you any difficulty in locating the state line north of the river? Where did it terminate at the river? How near to the river, and the kind of tree?

A. I had no difficulty in locating the state line north of the Little Tennessee river. It terminates a little over one-half of a mile above, and on opposite side of the river, the mouth of Slick Rock creek. The last marked tree found, descending toward the river is a hemlock, locally called spruce pine, five chains or 10 poles from the edge of the water.

Q. 4. State if you ran other ridges north of the river to ascertain if the state line marks were on them. If so, are said ridges located on the map Exhibit "A" to deposition of W. D. Hale? Locate the ridges thereon, and did you find state line marks on them? If the ridges thus run had local names, give them?

A. I ran two other ridges north of the river. The first one is marked on Exhibit "A" to W. D. Hale deposition as the "Lester Ridges." The other one is south of the line going toward the river.

We found no state line marks on either of these ridges.

1937 Q. 5. After locating the line north of the river what were the first steps taken by you with Muller and Hale in locating the state line south of the river; the state line in dispute? What ridge or ridges did you first run, and why?

A. The first ridge that we ran after crossing to the South side of the river was the ridge dividing the waters of Slick Rock Creek from Bear Creek—leading directly up to the Hangover mt. This ridge butt off at the river immediately opposite where the state line strikes the river on the north side—and the natural supposition would be that the state line would go straight across the river.

Q. 6. Describe the general topography of the country, the elevation and course of this ridge with others in the neighborhood. Please do so fully?

A. From the Tennessee River this ridge rises sharply for some 40 to 60 chains; then comes small knobs, small gaps and level places, until we reach the gap called Slick Rock Gap. Then the ridge rises fast with only a small gap or two, until we come to Big Fat Gap, the only really deep depression in said ridge. From Big Fat Gap it rises sharply again without hardly an intermission until it tops the Big Hangover, one of the highest points in this section. The course of this ridge is southwestern, and agrees well with the course of the state line on the north side of the river.

Q. 7. Do the surrounding ridges or spurs correspond in course, and are they as high as the Hangover?

A. The highest and most prominent ridge or mountain in this section is the ridge or mountain from the Hangover to the Strutton Bald—and no other surrounding ridge corresponds as well in course with the Hangover, as the one we first run up from the river.

Q. 8. State fully your survey up to the Hangover and on to where it and the Fodder Stack come together on the southwest; what trees if any you found showing state line or indicating said line; the location of these trees, in depression or on the ridge; the kind of trees; also if you found trees showing corners of tracts surveyed,

state how many as near as you can, and whether the tracts were surveyed east or west of this ridge?

"A. The best way to answer this question is to quote from my individual field notes. At station 94 I have "to stake by black oak, has plain evidence of old state line marks = blaze and one hack plain; other hack not so plain; on the south side not plain and can't say it has them on that side." At station 100, "to double sour-
1938 wood standing 1 and 2-10 chains west of the center of the Sourwood Gap. This sourwood has the old state line plain large one fore and aft—smaller one only on the northeast side." On re-examining this double sourwood on Jan. 29th, I have the following note: "The smallest tree has on the east side the two hacks and blaze, that I think is the old state line. Then it has two blazes above the two hacks and a blaze, but they are more recent. It has also five irregular hacks on south side. The largest one has the old state line, two hacks and a blaze on the east side, blaze nearly gone and also the two hacks and blaze, state line marks on west, but the upper hack is made with two licks of axe. It also has one recent on the south side." On station 103 "passing black oak fore and aft has two blazes plain, hacks not plain." At station 111 "to stk. S. 9. W. 38 links from this station stands a black oak with North Carolina Corner. Three hacks on east, three hacks on south, no cross." The above station is 4 and 4-10 chains south from Slick Rock Gap. Station 113, "passing chestnut oak indications state line (side line) mark, blaze plain, but marks not so plain." "Also passing white oak shows evidence of two hacks on northeast side; no evidence of marks on the other side." Under station 114, "face of the ridge broad, at 5 and 3-10 chains, passing a side line hickory, two hacks and blaze on east side. Hickory stands one chain east of our line. Think too young." Under station 116 "To stake on first high top from Slick Rock Gap near pine marked M. W. H. and a Spanish oak and lot of pines marked two hacks, blaze under and then a hack under blaze, thus ⊣ supposed to be a North Carolina corner." Under station 120 to large white oak with three hacks above a blaze fore and aft, rather new; on the north side has a very old blaze below the younger blaze, and looks like new blaze had cut out hacks. There is also on the east side two very old hacks—line marks—and line runs S. 15 and 1-2 W." Station 128 "to black oak on high knob at the head of Cain branch ridge. The black oak has three hacks above blaze on north and south, and two hacks above a blaze and one hack below the blaze on southwest." Station No. 132, "to near large chestnut with two hacks above a blaze and one hack below same blaze—seems to be North Carolina corner." Under station 148 "passing an old chestnut oak stump with plain blaze like state line and indication of two hacks above on east side—west side burnt off." Station 152, "passing small black oak two hacks and blaze under on west side, and above it a hack, a blaze and hack." thus: ⊣ Under station 163, "passing small chestnut at 3
1939 chains with two hacks above a blaze but rather new." Under Station 165, "passing half burnt chestnut with indications of state line marks." I have no more trees noted until after passing

the top of Hangover peak, and only two small mountain oaks between the Hangover and the place where the Stack lead strikes the same, except two small mountain oaks, one of which was split open and we counted 22 years' growth; also the other was too young for the state line. The marked trees that we supposed to be North Carolina corners, were marked as though the land lay on the east side of the ridge—I will state that some half a mile before getting to the Hangover peak the laurel set in, and found no trees old enough to hold marks; also after passing the Hangover peak, there is hardly any trees of a character to hold very old marks, being scrubby beech, buckeye and birch, and in fact for a great part of the way the comb of the mountain is bare of timber.

Q. 9. Did you continue to run and locate the state line southwest of where the two ridges come together, and if so did you find and locate the line satisfactorily; what kind of ground did you find marked trees on, how many, and how far did you continue the line?

A. We continued to run the line to the Hiwassee River, some 35 to 37 miles beyond where the two ridges comes together; some three-quarters of a mile beyond their junction we descend rapidly, and then we find the marks on large old mountain oaks, and generally when we find old mountain oaks, hickories, chestnut oaks and a few chestnuts we find the state line marks. The trees are mostly on the lower ground; when we climb to higher ground where the beech, buckeye and birch grow, we find no marks. Especially do we find plenty of marks after passing the turnpike where the line runs south across hollows and branches.

Q. 10. Had you any difficulty in finding the line after you passed the junction of the two ridges, and are you now satisfied you found the true line and marks?

A. I am satisfied that we found the true marks and state line.

Q. 11. Did you also run the Fodder Stack ridge to ascertain if it had state line marks on it, and with what care?

A. We run the Fodder Stack ridge with a great deal of care, looking the timber closely for all marks.

Q. 12. State if you found on this ridge that it had recently been run out as the state line, and if so by whom, how long ago and what kind of mark and monuments did he make?

1940 A. We found a new line marked with three hacks one above the other, (thus ⁞), it looked to be two or three years old; also found stones set up at about every mile. The one nearest the river is marked 62-39 and one number increases and the other decreases as you follow the ridge toward the Hangover lead. I understood from parties in the neighborhood that an engineer by the name of McClelland, from Murphy, North Carolina, run it, and so we gave it the name of the McClelland line.

Q. 13. Beginning at Tennessee River and following the same southwest course as to state line, give the ridge or ridges followed, their course and distances approximately, whether it is a continuous ridge or not, the kind of marked trees you found indicating the true state line, their location, kind of trees, &c.?

A. We began on the west or south bank of the Little Tennessee

River about eighteen chains below the mouth of Slick Rock, where McClellin's line strikes the river; then up a spur of the ridge, known as the Slick Rock lead, about a mile and quarter to its top, then along its top nearly west to the top of the Stiff Knee Knob, in all about 3 and ½ miles from the river; then generally a south course along the Fodder Stack lead about 7 to 8 miles to where it joins the Hangover lead. We found no marks along these ridges that were old enough for the state line until we come to the southeast descent of the Big Fodder Stack, some 7 and ½ miles from the river. Here we found a large white oak with two hacks above a blaze on the north side—don't show on the south. They are very old and like state line marks; we cut in the blaze and I counted 66 and then 69 years' growth. The tree stands about center, on the ridge. A little further on we passed an old scrubby chestnut oak with two hacks above a blaze on the south side—don't show on the north. Very old, shows only in the bark. About ¾ of a mile further on we passed a large mountain oak; it has three old marks on north, 3 on east, 3 on south and 3 on west, and also has below the above marks two hacks above a blaze, fore and aft, rather quartering on west edge. The two hacks and blaze are plain on the south side—two hacks plain on north but blaze about gone. The tree stands about five feet east of the summit of the divide—like state line—but never saw one marked quartering before the state line. These were all the marks noted on the main Fodder Stack Ridge that are like and old enough for state line. On our second trip in April we went out to the Big Fodder Stack and searched down a ridge that runs an eastward course from the 1941 east end of the Big Fodder Stack down to Big Slick Rock Creek. On this ridge some 635 feet from the east end of the Big Stack we find a hemlock or spruce pine marked with two hacks above a blaze, plain on east side and very much like state line marks. On west side the two hacks are plain, but blaze not very plain. We searched on down this ridge to the Slick Rock Creek, but found no marks like the state line.

Q. 14. This last marked tree; could it have been made by surveyors in locating state line on Fodder Stack ridge and if not, why?

A. It could not, as it is over 19 chains east from the main top of the Fodder Stack ridge.

Q. 15. From the place or locality where you found these old marks, how far is it to where the ridges come together, and did you find any state line marks along that distance? What is the character of the timber for holding old marks?

A. From the white oak about three and one-fourth miles and 2 and ½ miles from the large mountain oak. We found no marks like and old enough for the state line along the balance of the distance. Though we pass through for a mile or more, some very old hemlock or spruce pines and also wild cherries, and these ought to have held the marks if they had ever been put on them.

Q. 16. What is the character of timber for the first 7 or 8 miles after leaving the river, on this line? I mean for holding marks?

A. From the river up to the Stiff Knee, some 3 to 3 and ½ miles there are many old trees of white oak, chestnut oak, hickory, etc.,

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that hold marks well; from Stiff Knee on the timber is not so good, or rather there are not so many immediately on top.

Q. 17. Which is the main ridge; the Fodder Stack or the Hangover? Please explain the difference; how they diverge; their respective courses, and where each terminates? Explain fully.

A. There is no doubt but what the Hangover lead from the Hangover peak southwestward is the highest, most prominent and the main ridge in all that immediate section; especially is this noticeable at the point where they diverge. At this point, one has to descend rapidly for a quarter of a mile or more, the side of the Hangover lead before he can tell that he is actually on a divide, or the Fodder Stack lead, and if one was going along the Hangover lead he could hardly tell where the Fodder Stack lead joined it, without a pilot or guide. Starting at the point they diverge, the Hangover lead runs north of east to the Hangover peak, say 3 to 3 and ½ miles; there it turns nearly north, and for a mile curves a little west of north and then more eastwardly until it strikes the river, directly opposite where the state line comes to said river. The Fodder Stock lead after leaving the Hangover lead has a general course of nearly north, if anything a little west of north, for some 7 to 8 miles to Stiff Knee Knob; here there is a division of this ridge, and Fodder Stack lead loses its name; one ridge runs westward and is known as the Salt Spring mountain, and I understand runs into the fork of Citico Creek; the other ridge turns almost due east, and becomes the Slick Rock lead, and for two miles runs almost east and then turns more north and strikes the Little Tennessee River some 3 to 4 miles below the mouth of Slick Rock Creek.

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Q. 18. At the divide of Fodder Stack at Stiff Knee, which is the more prominent ridge—the Salt Spring which terminates at Citico Creek, or the other Slick Rock Ridge, which terminates at the river?

A. We only run out the Salt Spring mountain about one-half mile for this distance and there, judging by the eye as to its continuation, the Salt Spring is the highest and most prominent. At this point the Slick Rock Lead descends very rapidly into Slick Rock Gap, and while it has many gaps and knobs on it, it never rises as high as Stiff Knee again.

Q. 19. Please give general contour of Slick Rock Basin; the names of surrounding ridges; their relative height, and about the area in acres of its basin?

A. From what I have seen of the Slick Rock Basin, it is hardly anything but ridges and hollows, and the level places along the creek being narrow and not so many of them. These ridges run in toward the creek from all sides. On the south and east it — bounded by the Hangover lead; on the west by the Fodder Stack lead, and on the north by Slick Rock Lead and one of its spurs. The Hangover lead is the highest; the Fodder Stack lead is the next in height, and then the Slick Rock Lead. I think there are some 9,000 to 10,000 acres in the basin.

Q. 20. Have you had any experience in surveying in Ocoee Land District, and do you know what district the land in dispute would be if in Tennessee?

A. I have never surveyed any in the Ocoee District and do not know its boundaries from personal knowledge.

Q. 21. Taking the actual surveys as made by you with Muller and Hale, the marks found, the topography of the Country, your [943] experience as a surveyor, and also the calls of the commissioners locating the state line, that is: "From Tennessee River to the main ridge and along the extreme height of the same to where it is called Unicoi or Unaka mountain." Where, in your opinion, was the State line located by the commissioners when established in 1821?

A. I think they run up the Hangover lead.

Q. 22. What other surveyors were assisting you in locating the line, and how long were you at the work?

A. O. W. Muller and W. D. Hale. We made two trips; 1st in Jan. and Feb., 1896. In going and coming and field work, 24 days. 2d in April, 1896—12 days.

Further saith not.

J. K. WILSON.

Sworn to and subscribed before me this 13 Oct., 1896.

J. T. CARTER,
Dep. Clerk.

2 days 3.00
Marysville 32 miles 1.60
Fd. by Compl't.

It is agreed by counsel that counsel for defendant shall have the right to cross-examine the above named witness on the — day of — 189—, and to except to the questions and answers made in the foregoing examination-in-chief, and to the deposition generally, as fully as if such exception had been made at the time each question and answer was made, &c.

Oct. 13, 1896.

T. E. H. McCROSKEY,
Sol. for Compl't.
LUCKY, SANFORD & TYSON,
For Defts.

Deposition of J. K. Wilson (Cause No. 10561), filed Oct. 13, 1896.

J. T. CARTER,
Deputy Clerk.

And afterwards, to wit, on the 12th day of December, 1896, certain depositions of James Farr, Emerson Debity, Richard Stratton, S. R. Nicholas, A. D. Cline, Samuel Blair and John Debity were filed in the Clerk's Office of said court, which said depositions are clothed in the words and figures following, to wit:

1944 In the United States Circuit Court, Eastern District, Northern Division.

No. —. In Equity.

CHARLES HEBARD
vs.
D. W. BELDING et al.

The depositions of James Farr, Emerson Debity, Richard Stratton, B. R. Nichols, A. D. Cline, Samuel Blair, John Debity, witnesses for the complainant in the above entitled cause, taken by consent as to all of the defendants except J. W. Cooper, and pursuant to notice to said Cooper, at the residence of Virgil Grant, Esq., in the 17th Civil District of Monroe County, Tennessee, in the presence of said Virgil Grant, Commissioner, duly authorized to take said depositions, and in presence of the solicitor for compl't and the solicitor for all of the def'ts except said Cooper.

Said witness JAMES FARR, being by said Commissioner duly sworn, deposed and said:

I live about a mile from the lands in dispute. I live on the Fodder Stack Lead. I have lived on the lands in dispute in the Slick Rock Basin. I first lived on them about fifteen years ago, living then on the head of Little Slick Creek, on the west of main
1945 Slick Rock Creek. I lived there five or six years; maybe longer. That is where Ditmon now lives. Then I moved onto the old Cove on the same tract, where I now live. That is not on the land in dispute. I stayed there a year or two, perhaps two or three. Then I went back and lived east of the main Slick Rock Creek, in the Nicholas Cove. I lived there about nine years, and still keep my stock there, and my sister-in-law lives there. I have always understood that I have lived in Tennessee since I come over. I was raised in North Carolina, and moved over about fifteen years ago. Since I came to what I regard as Tennessee, I have voted at Mulberry, in the 17th Civil District of Monroe County, Tennessee, and have worked roads down by Boyd McMurray's in the same district, and have paid taxes in Tennessee and nowhere else. I have always understood the State Line to be on the divide East of Slick Rock, from here on the Hangover Lead. I always heard and understood that when you crossed over through the Slick Rock Gap, in the divide that runs to the Hangover, then you got into Tennessee. I understood this before I moved over. Whenever there was any trouble and any one had to get into Tennessee, I understood that when you had passed this point you was in Tennessee.

R. N. Archer began to cut timber in that basin over a year ago. They cut timber right around my possessions there. That was east of the main Slick Rock Creek. About the same time they were building a road and built some cabins on Little Slick Rock creek, at the mouth but west of main Slick Rock creek. A man came to me to get me to slide some logs for these cabins, and this was at the

same time they built the road. I saw some timber that had been cut on the west side of main Slick Rock creek.

The Leadbetters, Henry and John, moved into the place at the head of Little Slick Rock after I left. They were tenants of Mr. T. E. H. McCroskey, who was the agent for Hebard, I think. McClung owned the land before Hebard. I don't remember the names of other owners. The Leadbetters also voted at Mulberry, and worked the roads down here with me and paid taxes in Tennessee. They lived there seven or eight years. Henry Ditmon lives there now. Ab Klein lives about 100 yards away. They are living on what is said to be the land in dispute.

Just after I moved over to the Cove, about 10 years ago, I had gone over to Leadbetters' to sow some wheat, and saw a party of surveyors. I knew one of them—Pose Hyde, a North Carolina man—with whom I had gone to school. He said they were
1946 running the state line. The way they were running it would take in the head waters of Little Slick Rock. I told him I didn't think he would find the line there. He said he didn't think they would either, but that they were running a sort of conditional line.

Cross-examination:

I don't know who the Leadbetters were tenants of except what they told me, and they moved on the same property I left. I understand the whole Slick Rock basin to be in dispute. I don't live on what I understand to be the land in dispute. I heard Marion Canger say the state line ran along on the Hangover lead, and old Mr. Nelson; I believe I have also heard Andy Canger say it. I don't remember the names of anybody else in particular I heard say this.

And further deponent saith not.

JAMES FARR.

Sworn to and subscribed before me, this 11th day of Dec., 1895.

V. E. GRANT,
J. P. & Commissioner.

The said witness, EMERSON DEBITY, being duly sworn, deposed as follows:

I am a son of John Debity. I moved into the Slick Rock basin. When father moved into the Slick Rock basin, we moved into the fork of the creek on the east side of both creeks, and 8 or 10 miles above the mouth of the creek. Father is not living there now, though I understand part of his things are still there. I lived there with father for 17 or 20 years; that is, on the land in dispute. After I came of age I voted at Mulberry, in the 17th Civil District of Monroe county, Tennessee, and paid taxes there. I didn't work any roads until after I moved out of the mountains down here. I moved out last spring. I always understood that the state line ran up the Hangover divide east of Slick Rock creek. My father voted at the same place. My brother-in-law, Russ Hardin, also lived in the Slick Rock basin. Also Jordan Hicks, the Leadbetters on Little

Slick Rock, and Jim Farr used to live there. They all voted in Tennessee, paid taxes there, and worked the roads so far as I know.

Cross-examination:

I am twenty-nine years old. I have a brother named John and a brother named Bill. James Farr who has testified just
1947 before me is somewhere near forty. I have voted at Mulberry three or four times. The first time was the August election, when I was 22 years old.

E. E. DEBITY.

Sworn to and subscribed before me 11th day of Dec., 1896.

V. E. GRANT,
J. P. & Commissioner.

1948 Said witness, B. R. NICHOLS, being duly sworn, deposed as follows:

I moved on the disputed land about 12 years ago, where Hugh Blair now lives on Little Slick Rock creek; that is called the Leadbetter place. I lived about a year the first time, then moved
1949 back and off about three times, and stayed about a year each time. I voted at Mulberry, in Monroe county, Tennessee, paid taxes in this county, and worked the roads here. The line was said to be east of Slick Rock creek and I so understood it.

Cross-examination:

I am 30 years old. I am a farmer. I live on Hebard's land now. I don't think either Emerson Debity or Richard Stratton live on his land now.

And further deponent saith not.

B. R. NICHOLS.

Sworn to and subscribed before me, this 11th day of Dec., 1896.

V. E. GRANT,
J. P. & Commissioner.

The said witness, A. D. CLINE, being duly sworn, deposed as follows:

I live on Little Slick Rock creek on the land in dispute. I have lived there three years. I am renting from Mr. Hebard. I vote at Mulberry, in Monroe county, Tennessee, pay my taxes there and work the road down in Monroe county, Tennessee.

There was some timber cut last spring a year ago; I understood it was done by Mr. Archer. Part of it was cut at the mouth of Little Slick Rock creek, west of Big Slick Rock, but the biggest part was cut east of Big Slick Rock, in Nicholas Cove, and between the mouth of the big creek, the mouth of Little Slick Rock.

They also built part of a road up Little Slick Rock creek from the mouth up past my place to near Hugh Blair's at the head of the creek. They started through my fields but I wouldn't let them go

through. They stopped work when Mr. Barrs, the sheriff of Monroe Co., notified them to quit. They also built a cabin at the mouth of Little Slick Rock, west of Big Slick Rock.

Cross-examination:

I am 36 years old.

And further deponent saith not.

A. D. CLINE, his X mark.

Attest:
EDWARD T. SANFORD.

Sworn to and subscribed before me, this 11th day of Dec., 1895.
V. E. GRANT,
J. P. & Commissioner.

1950 Said witness, JOHN DEBITY, being duly sworn, deposed as follows:

I have lived at the fork of Slick Rock at the left hand prong about 9 miles above the mouth of the creek with the run of the creek. I have lived there 18 years the first day of next June. I have always claimed it was in Tennessee. I went to North Carolina once to vote and they wouldn't let me vote unless I swore I was in North Carolina, and I wouldn't do it. I understand the state line between North Carolina and Tennessee to be the Hangover lead. That is the forked lead which is the state line. There are three forked leads; the left hand prong in the state line; one of the other forks runs to the Cheowah river, and the other runs to the Sarvice Branch. These other two forks run into North Carolina. Old George Young and old Squire Bill Burriss showed me this line and said it would be the proper place for the state line, but it had never been run.

I vote at Mulberry, in Monroe county, Tennessee. I have paid taxes in Tennessee, but never paid taxes in North Carolina.

Cross-examination:

I was not living on these lands under Belding and others until very recently. I went there under myself. I did not take a
1951 lease either by myself or with my son, John Debity, Jr., on Nov. 16th, 1882, or about that time, from Thomas B. Reynolds, agent of D. W. Belding, M. M. Belding, Henry Stix, Nathan Stix, Louis Koulin, J. W. Cooper and others on their 14,800 acre tract, grant No. 1035; I did not take such a lease from them for any land whatsoever at any time. D. W. Belding once promised to send me a lease but didn't do it. The time was out and I didn't consider I held it for anybody but for myself. Mr. D. W. Belding stayed all night at my son John's house some years ago, and his men stayed at my house, and the next day Mr. Belding and I went to Dave Orr's house, and Belding told me to take charge of their property east of the Hangover lead and protect it for them and keep off trespassers, and I promised to do so, but he did not put me in possession of any land on this side of the Hangover lead, and I did not promise to take

care of any land on this side of the Hangover lead, either before or after 1882.

I have not admitted to R. Carver or any other person in the presence either of R. Carver or David Orr, *or* any other person that I held the land on which I was living as a tenant of the Beldings and others. I told Carver once that the land across the mountain was the Beldings, and the land on this side was mine. If you have anything to the contrary it's forged.

I did not sell out my possession a little while ago for $50.00 to anybody, and nobody has proposed to buy it. I have claimed my mineral interest, which is $\frac{2}{3}$. The Gov't owns the rest. The whole mineral is worth two millions and a half dollars. I haven't traded about it with anybody though a man named Sheridan asked me what I would take for it, and I told him it would take a right smart pile.

I am now living on government land at the head of Slick Rock creek. I live by myself. I live southeast of the Widow Crowder, about two miles and a half. My son John was alive the last time I heard from him.

And further deponent saith not.

his
JOHN x DEBITY.
mark.

Attest:
EDWARD T. SANFORD.

Sworn to and subscribed before me, this 11th day of Dec., 1896.
V. E. GRANT,
J. P. & Commissioner.

STATE OF TENNESSEE,
Monroe County, ss:

The foregoing depositions were taken before me as stated in the caption, and reduced to writing by consent, by Edward T. Sanford. And I certify that I am not interested in the cause nor kin or counsel to either of the parties. And I certify that I sealed up said depositions after they were taken, without being out of my possession after they were taken, and delivered the same to Edward T. Sanford of counsel for the defts., for delivery to the clerk at Knoxville, Tennessee.

Witness my hand and seal this Dec., 11th, 1896.
V. E. GRANT,
J. P. & Commissioner.

Filed Dec. 12, 1896. J. T. Carter, Dept. Clerk.

1952 Next witness, H. M. DITMORE, being duly sworn deposed as follows:

Q. 1. State whether or not you were along with W. D. Hale some two months ago when he blocked out some marks on Hangover Lead?

A. I was.

1953 Q. 2. State what you had to do with cutting or blocking out the blocks?

A. I cut them out myself, sir.

Q. 3. Are the two blocks which he has filed as Exhibits "A" and "B" to his deposition, one of them a black or red oak and the other a sourwood, the same blocks you cut out under his instructions?

A. They are.

Q. 4. Please state where these trees stood from which these blocks were taken—I mean on what lead and what direction from Slick Rock Creek?

A. On the southeast side of Slick Rock Creek, on the main ridge leading from the river above the mouth of Slick Rock Creek to the Hangover?

Q. 5. State whether or not the ridge where you found these trees is called the Hangover Ridge.

A. It is.

Q. 6. State if you were along with J. C. M. Bogle and H. S. Hayes when they made this survey up Slick Rock Creek?

A. I was.

Q. 7. State whether or not you as axman blocked out some of the marks they cut on that survey?

A. I did from two of the trees.

Q. 8. Where were those trees located?

A. One of them in what was called the Glen Gap on the Fodder Stack Lead. The other was up Big Slick Rock Creek about a mile and a quarter from its mouth.

Q. 9. The trees that were marked along Slick Rock Creek were they marked facing the creek or both ways?

A. Both ways. My recollection is the most of them facing from the creek.

Q. 10. The one you blocked on Slick Rock Creek was it marked facing to the creek or from the creek?

A. Facing from the creek.

H. M. DITMORE

Formal caption and certificate of transmission and the right of exception to any or all propositions of the foregoing depositions on account of incompetency, irrelevancy or inadmissibility of all or any proof of the same is hereby reserved until the hearing.

It is also agreed that the depositions may be signed by the stenographer.

WEBB & McCLUNG.
LUCKY, SANFORD & TYSON.

1954 In the United States Circuit Court, at Knoxville, Tennessee.

CHAS. HEBARD
vs.
D. W. BELDING et al.

The deposition of Boyd McMurray, a witness for the complt. in the above styled cause, taken by consent before Vastine Stickley, Clerk & Master, at his office, in Madisonville, Tenn., on this the 6th day of September, 1898.

Said witness BOYD MCMURRAY, being duly sworn, says:

(By COMPLT.:)

Q. 1. What is your age? What is your business, and where do you live?

A. I am 71 of age. I am a farmer and live on Little Tennessee river of Monroe county & in the 17th Civil District and at the foot of the mountains.

Q. 2. How far do you live from the N. C. state line, and how long have you lived there?

A. I live about 15 miles from the state line and have lived there for 30 years.

Q. 3. State if you have herded your cattle along or near the state line and if so for how long and where and how long have you known and been familiar with Slick Rock section of country?

A. I have herded cattle there for 31 years. The first year I herded my cattle on Slick Rock Creek, since that time I have herded my cattle on the north or opposite side of the river and have herded there every year since. Col. E. J. Sanford, of Knoxville, Tenn., owns the land where I now herd.

Q. 4. When you herded cattle on Slick Rock creek what did you then understand as to location of state line; who herded or looked after your cattle and how did you get your information about the state line.

A. The year that I herded my cattle there 31 years ago, Jack Milligan an old citizen who lived at the foot of the mountain and was raised there and about 4 or 5 miles from Slick Rock creek, went with me and showed me the country, he told me that the state line was on the dividing ridge east of and beyond Slick Rock creek called the "Hangover Lead." I have always since then understood that to be the state line. In 1880 or 1881 I was going over into North Carolina through the Slick Rock country and fell in with Isaac Carringer, who lived on Santeedla creek in N. C., when we got on the
1955 main divide or "Hangover" we stopped to rest and Carringer told me that that was the state line and pointed to a tree near the trail and said that it was a state line tree. I did not go and see the tree to see whether it was marked or not.

Q. 5. State whether Milligan or Carringer are now living and what aged men were they when they died and how long have they been dead?

A. They were both old men. Carringer has been dead ten or twelve years and Milligan has been dead five or six years.

Q. 6. State whether or not the people who lived on the waters of Slick Rock creek would come down and at different times work on your farm, and where did the people who lived on the waters of Slick Rock creek vote, pay taxes and work the public roads?

A. Yes, those Slick Rock people have worked for me from year to year and they voted and worked the roads in my district, they also paid taxes in Monroe county, Tenn. I frequently paid the taxes for them myself. All the men who lived on this side of the "Hangover" divide, voted, paid taxes & worked the road in Tennessee.

Q. 7. State if you know D. W. Belding, and if so, whether he has frequently stayed over night with you in going to and from North Carolina, and if he ever talked with you about the state line. Where did he claim the Slick Rock basin was located in, North Carolina or Tennessee?

A. Yes, I am acquainted with him, he has stayed all night at my house frequently on his way back and forth from N. C. he talked to me about the state line and he claimed that the Slick Rock basin was all located in North Carolina.

Q. 8. Do you remember a Mr. Hoyt who surveyed lands in the mountains near the state line, and if so how long since he worked there and how long was he surveying in that country, and who did he work for? State whether Hoyt made headquarters at your house and how long? What did he tell you about locating the state line in Slick Rock country. Tell all you remember about his surveys?

A. I remember Hoyt very well. He was an old man and I thought the best surveyor that I was ever acquainted with, and I remember of him surveying the state line for Gov. Wetmore some twelve or fifteen years ago, for he was surveying six months or more in the mountains for Gov. Wetmore and stayed at my house a month or more while he was at work there. Hoyt said he was surveying for Wetmore. Hoyt told me that he had located the state line on the Hangover ridge, that he found a pine tree mark at the edge of
1956 the water on the North side of the river, he then crossed the river and went up the main divide and found a sourwood plainly marked, on the Hangover lead, and he seemed to have no doubt about being the state line. Gov. Wetmore and Hoyt were both at my house and I heard Gov. Wetmore instructing Hoyt about locating the state line, and he told him to go north of the river and back four or five miles and first locate the state line on the north side of the river, and then to cross over and locate it on this side. It was after this that he told me of having located the state line on the main divide or Hangover ridge. Hoyt told me that he found marks up and down Slick Rock creek but that it was a "bogus" line. He also said that he found a line north of the river running through Mr. E. J. Sanford's land which he said was a "bogus" line also, while Mr. Hoyt was at my house he surveyed and platted my lands. Mr. Hoyt is now dead. Gov. Metmore lives in Rhode Island and owns mountain lands in this county.

Q. 9. Have you any interest in the location of the state line?

A. No, sir.

Q. 10. State if you ever talked with Edward T. Sanford and tell him where you understood the state line to be located?

A. Edward T. Sanford told me that they were going to locate the state line on Slick Rock creek. I told him that if they did it would not be right.

And further saith not.

BOYD McMURRAY.

Sworn to and subscribed before me this Sept. 6th, 1898.

VASRINE STICKLEY, *C. & M.*

1957 In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

No. 1056.

CHAS. HEBARD
vs.
D. W. BELDING et al.

The deposition of T. E. H. McCroskey, witness for the complainant, taken by consent of parties, except the defendant J. W. Cooper, & upon notice as to him, before J. T. Carter, Deputy Clerk of said court, at his office, in Knoxville, Tennessee, on this the 8th day of January, 1897, in the presence of T. S. Webb, Sol. for Complt., and E. T. Sanford, Sol. for Defendants, except J. W. Cooper.

The said witness, T. E. H. McCROSKEY, being duly sworn, deposed as follows:

I am 53 years of age, am a lawyer and reside at Madisonville, Monroe county, Tenn. I have lived in said county all my life, except about two years, 1867 & '8, when I lived in Kingston, Tenn. My home is about 30 miles from the land in dispute. I have been acquainted with the lands for 20 years or more and with the title. I have been attorney for parties owning the lands west of Slick Rock creek for at least 20 years, being what is known as the White & Bearden tract of 30,000 acres, and have been looking after the lands, clearing up title, removing squatters, paying taxes, &c. I have been upon and over the lands very often during that time, and think I

1958 am familiar with the lands and boundaries. After I had been looking after the White & Bearden land for perhaps 4 or 5 years the question of the state line between North Carolina & Tenn. came up, and I found from the best information I could get that the Hangover lead was the state line. I further found, on investigation, that the White & Bearden tract did not reach the state line as the deeds called for Slick Rock creek, and that there was a part of the land east of Slick Rock creek unsurveyed in the Ocoee district.

Prior to 1836 the Cherokee Indians occupied the mountain land

including what is known as the Ocoee land district. Their rights were extinguished in 1835 by U. S. Gov't. and the land ceded to Tennessee by the government. In 1836 the legislature of Tennessee passed an act authorizing the survey of said lands into ranges, townships, sections & fractions. John B. Tipton being the general surveyor. The lands were surveyed, as I understand, in 1836 & 1837, by Tipton and his assistants. Thomas Calloway was one of his deputies. A Mr. Brannum and T. G. Harvey were on the survey. I have frequently talked with Brannum and Harvey about the survey and in fact when I wanted any information about the lands or the survey I always called on Mr. Harvey and always found his statements correct by subsequent information. Tipton, Calloway, Brannum and Harvey are all dead. I knew these parties personally and know that they are dead. T. G. Harvey, the last survivor, died in December, 1895, and before his death informed me that he was the last survivor of those who assisted in the survey of the Ocoee land district. I know that Tipton, Calloway and Brannum died before Harvey.

After finding that the lands in the Ocoee district was surveyed to Slick Rock creek, I asked Mr. Harvey why the survey stopped there. He told me that the Hangover lead was the state line, but the surveyors, when they got to Slick Rock creek stopped there, because the lands east of the creek was very rough and steep and they were worn out with and tired of the work.

In surveying the lands, each township or fraction was mapped in a book on separate pages and I herewith file as exhibit "A" to my deposition a certified copy of the fractional township covering that part of the land in dispute lying west of Slick Rock creek, and which shows that the survey extended to Slick Rock creek, but did not include the lands east of the creek. T. J. Knox, who certifies to the map filed is now register of the Ocoee land office and has his office in Cleveland, Tennessee, where the office has been ever since I knew any thing about it, for 20 years or more.

1959 Complainant Charles Hebard has title to all the land in dispute lying west of Slick Rock creek by grants from the state of Tennessee, and mere conveyance to himself through the various and many parties who have owned the lands or interested in them, under the title papers in this case, and this land has always, since I have had anything to do with them, been assessed for taxes in Tennessee, and I have been paying the taxes for the owners under complainant's title since 1875 or '6.

After being employed as attorney to look after the land I did not go on it in person until 2 or 3 years or about 1880, when I found parties or squatters scattered about over the White & Bearden tract of 30,000 acres. They did not claim title but said they understood they were living on the White & Bearden land and were willing to take leases. The tenants in common owning the land were scattered over various states and some of them minors, and as it was mountainous and unproductive no one had been looking after it until I took charge. The parties living on the lands readily took leases, or the most of them, some were living on the land in dispute west of Slick Rock and on Little Slick Rock creek, where Henry

Ditmore, Huse Blair and Ab Cline now live; they took leases from me, and these possessions and leases have been kept up continuously since 1880, on the lands in dispute west of Slick Rock creek as well as the balance of the 30,000 acres. During all this time there has been no one in possession of this land under parties claiming title from North Carolina nor did any one living on the land claim to live in North Carolina. They all claimed to live in Tennessee.

I have been on these lands frequently since 1880 for the purpose of looking after the land and keeping up the possession. I never heard of any claim on the part of claimants from North Carolina until within the last 4 or 5 years.

As to the lands east of Slick Rock Creek. After I had become more familiar with that section, the titles and boundaries, and about 1883 I found that the lands east of Slick Rock Creek and between that and the Hangover Leads the state line had never been surveyed or granted, and in 1883 I obtained an entry and had the land surveyed, and in 1892 I got another entry and a grant in the name of H. M. McCroskey & myself. I file said original grant as exhibit "B" to my deposition. I also file as exhibit "C" to my deposition the deed from H. M. Croskey and myself to Charles Hebard, the Complt., covering the same land.

This grant and deed covers all the land lying east of Slick Rock creek and the White & Bearden land and west of the Hangover Lead, which I understand to be the State Line.

1960 This entry and grant was obtained in good faith because I found the land unsurveyed and ungranted and lying in Tennessee, and was open for entry and grant.

At the time I got the entry in 1883 one John Debity was living in a cabin within the boundary, and claimed to live in Tennessee. He is still living there and has always claimed to live in Tennessee. At that time James Farr also lived on the land, but I was not aware of it; they are now both tenants of Complt. I never heard of any one living on the land east of Slick Rock Creek and west of Hangover who claimed to live in North Carolina or to be tenants of those having title from North Carolina.

The bill filed in the Chancery Court at Madisonville, Tenn., and removed to this court, being No. 1055 on the docket, does not cover or describe lands east of Slick Rock Creek, but only lands west of the creek, as complainant at the time said bill was filed did not own the land east of the creek, the title still being in H. M. McCroskey & myself, as the date of the deed shows. Afterwards we sold to Mr. Hebard and he filed the bill No. 1056, which includes the land on both sides of the creek.

The entire boundary in dispute is very rough and mountainous, almost entirely worthless as farming lands and valuable only for its timber and possibly the minerals.

I have been on both the Hangover and Fodder Stack lead, and also on the State ridge north of Tennessee River, and standing on the ridge (the state line north of the river), looking southwest over the river and the ridge on the south side of the river, the natural conclusion is that the Hangover lead is the continuation of the state

line. It is immediately in front of one looking southwest, is the highest ridge in sight, in fact, the only one visible that could be considered the state line. It stands in bold relief directly opposite and looks as if the river had cut the mountain in two; I have been on the mountain where the Hangover and Fodder Stack leads join at the Stratton bald. Standing on the main ridge it was impossible to see where the Fodder Stack lead left the main ridge; we had to go down the side of the mountain along a trail 400 or 500 feet until we reached the Fodder Stack lead, which branched off at right angles from the main ridge like the limb of a tree from the main trunk. The Hangover ridge coming from the southwest is a continuous main ridge and of the same height and general course of the mountains beyond where the two ridges come together and where the state line is not disputed.

1961 Prior to Decr. 21, 1896, I mailed a letter to J. W. Cooper, one of the respondents, asking him to fix a time to take my deposition. I file his answer thereto, dated Decr. 21, 1896, as exhibit "D" to my deposition. I then mailed to him on Decr. 23, 1896, a letter, a copy of which is herewith filed as exhibit "E," and my deposition not being taken at the date fixed because of absence of opposite counsel * * * I, on Dec. 31, 1896, mailed him another letter, a copy of which is filed as exhibit "F," the letters as shown by copies E & F were placed in the postoffice the day they bore date, duly stamped, and by due course of mail would reach him the next day, being directed to him at his home in Murphy, North Carolina.

Cross-examination by EDWARD T. SANFORD, Sol. for all Def'ts except J. W. Cooper:

I do not know of my own knowledge what territory the Cherokee Indians occupied prior to 1836, that was before my day; neither do I know of my own knowledge how their rights were extinguished and the land vested in Tennessee; nor do I know of my own knowledge who was the general surveyor of the Ocoee District, nor who surveyed the lands in that district, nor what persons assisted in or were on the survey, nor how far the survey extended. The various leases to which I have referred in my examination in chief *or* in writing. All the people that I talked with living on this White & Bearden land claimed to live in Tennessee, as I have testified. I think I talked with all of them.

Complts.' leases to James Farr and John Debity are in writing. When I speak in my direct examination of standing on the state line ridge north of the river I mean the ridge found marked by the surveyors and shown on Hale's map, filed in this cause. John Debity is a very old man; I suppose he is seventy-five years old, probably older. And further deponent saith not.

T. E. H. McCROSKEY.

It is hereby agreed that formal caption and certificate to this deposition is waived, and that each and every exception or right of defendants to except to any or all parts of the foregoing deposition on

any matter of competency, relevancy, materiality or admissibility as evidence are hereby reserved until the hearing, and may
1962 be made at that time with the same force and effect as if made and set down at the time of taking the deposition. This Janv. 8th, 1896.

T. S. WEBB, *Sol. for Compl't.*
LUCKY, SANFORD & TYSON,
Sols. for all Defts. except J. W. Cooper.

EXHIBIT "B" TO T. E. H. MCCROSKEY'S DEPOSITION.

No. 8970.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the county surveyor's office of Monroe county, Tennessee, July 28, 1883, and of an entry made in the entry taker's office of the Ocoee District No. 9613 dated April 29, 1892, in conformity with an act passed by the legislature of said state Feby. 25, 1854 to H. M. McCroskey and T. E. H. McCroskey, said entries having been made upon unsectioned lands in said Ocoee District in conformity with said act of the legislature there is granted by the said state of Tennessee, unto H. M. McCroskey and T. E. H. McCroskey a certain tract or parcel of land containing five thousand (5,000) acres, more or less, lying in Monroe county, in said district:

Beginning at the mouth of Slick Rock creek, where it empties into Tennessee river, thence up the said Slick Rock Creek with the line of the White & Bearden lands to the point where the said White & Bearden's line leaves the creek; thence following the White & Bearden line to where it intersects the North Carolina line on top of the mountain southwest of the Hangover, thence with the North Carolina line to the Tennessee river; thence down the Tennessee river to the beginning.

With the hereditaments and appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said H. M. & T. E. H. McCroskey and their heirs forever.

In witness whereof, James P. Buchanan, governor of the state of Tennessee, hath hereunto set his hand, and caused the Great Seal of the state to be affixed at Nashville, on the 14th day of May in the year of our Lord, 1892, and of the Independence of the United States, the one hundred and sixteenth.

By the Governor:

[SEAL.] JOHN P. BUCHANAN.

C. A. MILLER, *Secretary.*

1963 H. M. McCroskey & T. E. H. McCroskey have title to the above described land.

A. J. WHITE.
Register of the Ocoee District.

Recorded in office of register of Ocoee District in Book "P," page 244 on this the 16th day of May, 1892.

A. J. WHITE,
Register of the Ocoee District.

(Endorsed:) Grant No. 8970. State of Tennessee to H. M. & T. E. H. McCroskey. Exhibit "B" to deposition of T. E. H. McCroskey, Charles Hebard vs. D. W. Belding, et al. Filed Jan. 8, 1897. J. T. Carter, deputy clerk.

EXHIBIT "C" TO DEPOSITION OF T. E. H. McCROSKY.

This indenture, made this 28th day of Nov. A. D. eighteen hundred and ninety-five, by and between H. M. McCroskey and T. E. H. McCroskey, of Monroe county Tennessee, of the first part, and Chas. Hebard, of Baraga county, Michigan, of the second part:

Witnesseth: That the parties of the first part for and in consideration of the sum of one thousand dollars in hand paid, have this day bargained and sold, and do hereby grant and convey unto the party of the second part, the following described real estate situated in the seventeenth civil district of Monroe county, Tennessee, bounded as follows, to wit:

Beginning in the centre of Little Tennessee River, opposite the mouth of Slick Rock Creek;

Thence up the centre of said river, with its meanders, when reduced to a straight line, south 68 degrees east 162 poles to a point in said river bearing south 2 degrees east from a spruce pine and a rock corner on the north bank of the Tennessee River—the southeasterly corner of what is known as the Sanford tract in Blount County, Tennessee;

Thence south with the state line to stake and pointers and sweet gum tree on south bank of said river at the foot of ridge forming the easterly divide and boundary of the waters of Slick Rock Creek;

Thence up this leading ridge, giving approximately the bearings as follows, but the line to be with the main crest of said ridge, leading up the Hangover Mountain and the state line between Tennessee and North Carolina:

1964 South 31 west 11 poles; south 51 west 2 1-2 poles; south 65 west 18 poles; south 72 west 14 poles to a stake on point of ridge; south 86 west 7 poles to a point on ridge; south 19 west 5 poles to a blazed pine; S. 53 1-4 W. 12 poles to a point on ridge; S. 63 W. 11 poles to a point on ridge; S. 85 3-4 W. 11 and 1-2 poles to a chestnut; N. 81 and 3-4 W. 8 poles, S. 69 and 1-2 W. 21 3-4 poles to a chestnut; S. 9 and 1-2 W. 21 poles to a black oak; S. 40 and 1-4 W. 14 poles; S. 62 W. 4 and 1-2 poles to a hickory; S. 3 and 1-2 E. 5 and 9-25 poles; S. 58 W. 15 and 1-5 poles; S. 10 W. 15 and 17-25 poles to a dead tree; S. 82 and 2-3 W. 10 poles; S. 12 W. 15 and 1-4 poles to a pine; S. 2 W. 12 poles, passing a depression at 2 poles, to a point; S. 29 W. 3 and 1-5 poles; S. 45 E. 8 poles; S. 30 E. 22 poles, passing a depression at 10 poles to a point at turn; S. 7 1-2 W. 8

poles; S. 45 and 1-2 W. 7 poles; S. 68 W. 10 and 9-25 poles to a small black oak; N. 86 and 3-4 W. 3 and 17-25 poles to a point near a stone corner; S. 28 and 3-4 W. 16 and 1-5 poles, passing Sourwood Gap at 14 poles to a small sourwood; S. 15 1-4 W. 17 and 3-5 poles to a black oak; S. 35 E. 6 and 6-25 poles to a point at turn; S. 47 W. 12 and 18-25 poles to a black oak; S. 76 and 1-2 W. 20 and 1-10 poles, passing an oak at two poles to a chestnut oak; S. 2 and 3-4 W. 20 poles; S. 15 E. 8 poles; S. 28 W. 12 and 2-25 poles; S. 46 W. 1 and 22-25 poles; S. 15 W. 12 poles to a stake in Slick Rock Gap;

Thence on, southwestwardly, continuing with the state line on the leading ridge forming the easterly water shed of Slick Rock Creek, and dividing the waters of Slick Rock from those of Cheowah, including all lands on the waters of Slick Rock Creek, to the point in the State Line between North Carolina and Tennessee where the land conveyed to said Hebard by deed of Fleming and Simonson, registered in said Monroe County in Book "Z" at page 162 joins to said state line;

Thence with the said Hebard's land to the beginning.

The intent of this convevance being to convey all the lands lying between the land conveyed to said Hebard as aforesaid by Fleming and Simonson, and the state line above described, including the places where John Debity and Emerson Debity now live; containing, by estimation, 5,000 acres, be the same more or less, and being the same land granted to the parties of the first part by the State of Tennessee under entry dated 28th July, 1883, and Grant Number 8970, dated May 14th, 1892. Which said land, together with all rights, reversions and remainders thereto belonging or in anywise appertaining is conveyed, to have and to hold to the said Hebard, his heirs and assigns, in fee simple forever.

1965 And the parties of the first part covenant with the party of the second part that they are lawfully seized of said land, have a good right to convey it, and that the same is unincumbered, and they do hereby forever warrant the title to said land to party of the second part, his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals on the date first above written.

H. M. McCROSKEY. [SEAL.]
T. E. H. McCROSKEY. [SEAL.]

STATE OF TENNESSEE.
Monroe County:

Personally appeared before me, L. A. Robinson, Dep. Clerk of County Court of said County, the within named T. E. H. McCroskey & H. M. McCroskey, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purpose therein contained.

Witness my hand, at office, this 4th day of Dec., 1895.

L. A. HUNT, *Clerk.*
By L. A. ROBINSON, *Dep. Clerk.*

STATE OF TENNESSEE,
Monroe County:

I certify that the foregoing is a true and perfect copy of deed and certificate thereon as found of record in my office this Sept. 10, 1896.

THOMAS McCLELLAN, *Register.*

(Endorsed:) H. M. McCroskey et al. to Chas. Hebard. Deed. Exhibit "C" to deposition of T. E. H. McCroskey. Chas. Hebard vs. D. W. Belding et al. Filed Jan. 8, 1897. J. T. Carter, Deputy Clerk.

EXHIBIT "D" TO T. E. H. McCROSKEY'S DEPOSITION.

MURPHY, N. C., *Dec.* 21*st*, 1896

Mr. T. E. H. McCroskey, Madisonville, Tenn.

DEAR SIR: I have your letter of — inst. saying that you desire to have your deposition taken, and asking my consent, and that I set a time for the taking the same. I must decline to set any time 1966 or to make any consent agreement, as I propose to insist on my objections to the jurisdiction of the Court to try the action on the grounds set out in my answer to the complainant's bill.

Yours truly,

J. W. COOPER

Filed Jan. 8, 1897. J. T. Carter, Deputy Clerk.

EXHIBIT "E" TO T. E. H. McCROSKEY'S DEPOSITION.

Copy.

MADISONVILLE, TENN., *Dec.* 23, 1896

J. W. Cooper, Esq., Murphy, N. C.

DEAR SIR: In the suit of Charles Hebard vs. D. W. Belding et al. in the U. S. Circuit Court at Knoxville, Tennessee, on Thursday, the 31st day of December, 1896, at the Clerk's office of said Court, in Knoxville, Tenn., we will take the deposition of T. E. H. McCroskey to be used as evidence for Complainant in said cause.

CHARLES HEBARD,
By T. E. H. McCROSKEY, *Sol.*

Filed Jan. 8, 1897. J. T. Carter, Deputy Clerk.

EXHIBIT "F" TO T. E. H. McCROSKEY'S DEPOSITION.

Copy.

KNOXVILLE, TENN., *Dec.* 31, 1896.

J. W. Cooper, Esq., Murphy, N. C.

DEAR SIR: On Friday, the 8th day of January, 1897, at the office of the Clerk of United States Circuit Court, at Knoxville, Tennessee,

1967 we will take the deposition of T. E. H. McCroskey to be used as evidence for Compl't in case of Charles Hebard vs. D. W. Belding et al. now pending in said Court.

CHARLES HEBARD.
By T. E. H. McCROSKEY, *Sol.*

We did not take the deposition today because Lucky, Sanford and Tyson were all out of the city.

McCROSKEY.

Filed Jan. 8, 1897. J. T. Carter, Deputy Clerk.

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding et al. Deposition of T. E. H. McCroskey and Exhibits D. E. F. Filed Jan. 8, 1897. J. T. Carter, Deputy Clerk.

1968 In the U. S. Circuit Court, at Knoxville.

CHAS. HEBARD
vs.
D. B. BELDING et al.

Deposition of O. W. Muller, Witness for Complainant, Taken October 12 & 13, 1896.

The witness, O. W. MULLER, being duly sworn, says:

(Questions by complainant:)

Q. 1. What is your age, where do you reside, what is your occupation, how long and what experience?

A. My age is sixty-two years. I reside in Polk county, Tennessee. My occupation is farming and land surveying. I have been surveying for twenty years in Tennessee and Georgia.

Q. 2. State if you were called upon to locate the state line between North Carolina and Tennessee at Slick Rock creek and near where Little Tennessee river crosses said line, and if so by whom; what other surveyors were with you—and did you undertake to locate said line?

A. I was called upon to do the above named work by Seymour and McCroskey in connection with Hale of Monroe, and Wilson of Blount Co., Tenn.

Q. 3. What method did you adopt to learn the true mark indicating the state line mark, and what is the mark?

A. We went to the north side of Little Tennessee river and examined the line for a considerable distance, and found the state line marked with two hacks above a blaze.

Q. 4. Examine the map, of Exhibit "A" to deposition to W. D. Hale, and state if it correctly outlines and shows the lines run, and work done by you with Wilson and Hale?

A. I consider it substantially correct.

Q. 5. Please state the distance you ran the state line north of the river, what care you took to locate the same, about how many
1969 trees marked with state line mark did you find, and at what point on the river did said line terminate?

A. We began about two miles north of the river, examined all ridges running in the direction of probable state line carefully, and found about fifteen trees marked with state line marks, the last tree being a large spruce pine near the river, marked plain as fore and aft. We also found two hack and three hack lines and corner pointers evidently designating land lines and corners belonging to North Carolina and Tennessee, along the state line.

Q. 6. Had you any difficulty in finding the true line north of the river? Where did it terminate at the river and how near to the river on the north did you find the last tree, and the kind of tree?

A. We had no difficulty in finding and determining the marked tree line north of the river; the rest of the question is answered above.

Q. 7. State if you ran other ridges north of the river to ascertain if they had state line marks? If so, are those ridges located on the map filed? Locate them, giving their names if they have any, and did you find any state line marks on them?

A. We ran other ridges; they are located on the map, showing the track of the compass by a single green line; the line having the state line marks on it is shown by a green line bordered with brown. We found no state line marks on the ridges marked by a green line only. I can not give the names of the ridges.

Q. 8. After locating the state line north of the river what steps did you first take to locate the state line south of the river; the place; what ridge or ridges did you first examine and run, and why?

A. We crossed the river, examined all the ridges that could possibly be called a continuance of the main ridge on the north side of the river, and all spurs leading to the prominent ridges on the south side. We found no old state line marks on any of these near the river, and ran our line on the most prominent—running to what is called "Slick Rock Gap," because it fills the description of the report of the commissioners as recorded in the Code of Tennessee.

Q. 9. What is this ridge called? Was it leading to the Hangover or Fodder Stack Ridge?

A. It is the ridge leading to the Hangover, and the whole length is called the Hangover lead.

Q. 10. Was there anything in the topography of the country, the elevation and course of surrounding ridges to cause you
1970 to adopt this? If so, describe fully, giving general topography, elevation and course of this ridge with others?

A. The topography of the country determined our selection of this "lead." Standing on the summit of this ridge and looking back over the ground we had traversed, the continuance of the leading ridge seemed so plain that there seemed no possibility of mistaking the identity of the formation. It looks as though the river, impeded in its course, had burst through the mountain, worn down

the rocky chasm, leaving the same configuration of its sides on both sides of the river; the course is southwesterly, the general elevation greater than the surrounding ridges. None of the other ridges look like a continuation of the ridge on the north side of the river on which the "marked state line" is found.

Q. 11. Please state in detail the course of your survey up the Hangover, not giving the many calls but the course, distances, the trees if any found with state line mark, their locality on ridges or depressions, the trees, their kind, etc., and continuing on said ridge to where the two lines come together on the southwest?

A. We surveyed along the top of this leading ridge, which runs in a direction a little west of south to the top of the Hangover a very high and prominent peak; thence its trend is more west, being nearly southwest from the Hangover, passing the "Hao," the highest point in that region, the "Strutton Bald," and continuing in the same general direction toward the Strutton meadows. Several depressions in the leading ridge, commonly called gaps, are passed. There are many marked trees on this line, made at different periods; some very old so as to be almost extinct; some recent, apparently only twelve or fifteen years old; also many indications of corners. Some of these marked trees are so indistinct as to be scarcely discernible, the bark having sloughed off sometimes, leaving merely an ax sign. These we did not note.

At a depression—Sourwood Gap—about one mile from the river, we found a double sourwood very plainly marked with the characteristic state line mark as a fore and aft tree. This tree is old, and the tooth of time will soon obliterate the marks, as part of the bark is beginning to loosen and decay. Passing "Slick Rock Gap," and ascending about one-fourth of a mile from the sourwood, is a small scrubby hickory with a plain state line mark as a side line. A little farther on, an old chestnut oak stump, with the same marks that bear the stamp of age. From this place on as we ascend to higher
1971 ground we find no more state line marks that we consider distinct enough to note—and the land marks and corner indications seem to show more age as we ascend—until on the highest ground the marked trees of all kinds disappear, the timber becomes more scrubby and of such a nature that it would preserve a mark in the bark but a short time.

Descending from the Strutton Bald we strike Laurel and somewhat lower ground. Here a low flat ridge runs off in a nearly north direction, leading to what is called the Fodder Stack lead.

Q. 12. About how much higher is the Hangover Ridge than the Fodder Stack Ridge, and what means did — adopt to ascertain the relative height?

A. I took barometric heights and found the difference in the mercury to be about one inch. Leveling the compass on top of Hangover Lead, the sight across went much above; doing the same on the Fodder Stack lead, on the highest points the level sight went far below, making at least six hundred feet difference in favor of the Hangover lead.

Q. 13. State if continuing south west beyond where the two ridges

come together you ran and located the state line, and if so how far and to what point? How far beyond the junction of the ridge did you run before you found the state line marks, and how frequent, and generally on what kind of ground and timber?

A. We ran about one mile south west of the junction of the ridges, descending to lower ground when we found the first tree marked with state line marks—a mountain oak. This is on a low, smooth ridge—we found several well marked trees, satisfactory for state line. We ran the state line to Hiwassee river, following the main divide, sometimes finding the characteristic state line marks quite frequent, and sometimes running for several miles without finding anything satisfactory. On ascending to high ground we generally lost the marks to find them again as we descended to lower ground. This state of affairs continued when, having passed the turnpike where the line leaves the main ridge, we ran a direct line to Hiwassee river, being about thirty-five miles from the junction of the Fodder Stack lead, and the Hangover lead.

Q. 14. State if you also ran out the Fodder Stack Ridge to ascertain if state line marks were on said ridge, and if so did you use as much care in running that line and searching for marks as on other lines run by you?

A. We did run out the Fodder Stack Lead and bestowed — and were as careful and particular to find everything in the way
1972 of marks as we were on the Hangover ridge or any other portion of our work.

Q. 15. On the Fodder Stack lead state if the line had been run by a North Carolina surveyor, and if so about how long since and by whom? Did you find any marks or monuments made by him, and if so what were they, and where was the terminus at both ends of disputed territory?

A. We found milestones set up from Little Tennessee river to the Unaka Turnpike. Beginning at the turnpike there is a stone marked—1893—N. C.—101—and this series runs on to near Little Tennessee river, where a rock is marked N. C.—39-62—two hundred and eighty-three poles from the river. These monuments are on the Fodder Stack lead, and this line is heavily marked with three heavy ax cuts fore and aft and side line, and looks to be about two or three years old; but as to when, and by whom it was made, I have nothing but the report of the mountaineers.

Q. 16. Beginning at the Little Tennessee river and running southwest general course with the Fodder Stack ridge line as claimed, please give the ridge or ridges followed, whether it is a continuous ridge or not, the courses followed, the character of the ground and timber, and what trees if any you found indicating the true state line, their location and kind of tree?

A. Beginning at the Tennessee river and following the line indicated by the marked trees and milestones, we ascend a spur running nearly south, then a little south of west striking a leading ridge running from near the mouth of Rabbit Creek to Stiff Knee Gap; thence running in nearly a western direction to Stiff Knee and striking the Salt Spring mountain nearly at right angles; thence running in a

southerly direction to the Little Fodder Stack; thence in the same general direction, passing Big Fodder Stack and striking the Hangover lead in the place heretofore indicated. From the Little Fodder Stack to this junction it may be called a continuous ridge, broken by several gaps and points. The timber is not as scrubby as on the Hangover Lead, except on the highest points. We found many marks besides those indicating the recent line. About eighty poles south of the top of the Big Fodder Stack we find a large white oak marked with an old mark—two hacks above a blaze—on the north side. This we blocked and found sixty-nine growths between the bark and blaze. This is near the stone monument marked 32-69.

1973 About twenty poles farther we find a chestnut oak marked with this mark on the south side; a little farther we pass a spotted oak marked quartering with the trail; also several sets of three hack marks. These are all the marks of this kind, I think, have any claim to age.

North of this about one mile, we find a great many marks of this kind—(two hacks above a blaze)—of recent origin, meandering with trails, and evidently made for trail marks.

Q. 17. You mention old marks—two hacks and a blaze—beyond Big Fodder Stack. Did you find like marked trees off the main ridge, and if so where and how many?

A. We did. We found a great many, appearing to be about twenty-three years old, about one mile north of the Big Fodder Stack, running across the leading ridge and around on the sides of the ridge, following a trail. We found the same marks on several spurs of this leading ridge, running off towards Slick Rock Creek, all however wanting in the show of age except one on a spruce pine or hemlock standing on a cliff on a spur near the top of the mountain, running from the Big Fodder Stack into the fork of two small tributaries of Slick Rock Creek. This is marked in the bark, and appears older than the ones above mentioned.

Q. 18. This last marked tree—did it bear the same indications and age as the three trees "old marks" on the ridge, and could it have been made by surveyors locating the state line on the Fodder Stack Ridge—and if not, why?

A. It bears the marks of age as much as the above mentioned three trees. But the tree is isolated; I searched the ridge or spur diligently, examined every tree and while there were many trees capable of holding a mark, found no other. I never attach much importance to a single marked tree as indicating a surveyor's work, if it has nothing else to corroborate it. It is not in line with the Fodder Stack Ridge; it is on a spur that runs off at right angles, and could not have been marked as indicating a line running with the Fodder Stack lead.

Q. 19. Between this and where the two ridges come together, did you find any marked trees, state line; what was the character of timber for holding old marks? Also, what was the character of timber for the first 7 or 8 miles of the line for holding old marks?

A. The character of the timber on the whole distance from the

river to the junction of the ridges is such as to hold marks except on the highest points.

Q. 20. Is the Fodder Stack or Hangover the main ridge. Explain the difference, their respective courses and terminations. Explain fully.

1974 A. The Hangover ridge or lead is undoubtedly the main ridge in this section of the country. If traveling northerly we begin on the main top of the Unaka's on the state line of Tennessee and North Carolina and follow this line to the junction of the Hangover and Fodder Stack leads, we see before us towering above all the neighboring points, and in the direction we are going, the Strutton Bald, the Hao or Christies Peak and the Hangover, all connected by narrow leading ridges. From the Hangover, tending a little more west, this ridge gradually descends to the river having but few gaps, mostly high until it bluffs at the river gorge. On the north side of the river on about an equal elevation with bluffs rising from the river, the almost exact counterpart of the bluff on the south side of the ridge continues in the same general direction to the Smokeys. The connecting ridges between the high points overlook the highest points of the surrounding country. The lowest Gap between the Strutton Bald and Hao appearing to be about four hundred feet above Big Fodder Stack, the highest point of that ridge. The prominence is unmistakable.

The Fodder Stack Ridge at the junction drops off in a wide flat descent, nearly at right angles from the general direction of the leading ridge we have been following, the principal points being the Rock Stack, Big Fodder Stack and Little Fodder Stack. This lead has several prominent prongs. At Big Fodder Stack, Pine Mountain breaks off westwardly, on the east spurs run towards Slick Rock Creek at Stiff Knee—one spur turns to the east, dropping down about one thousand feet, dividing into Tallassee mountain which terminates at Little Tennessee River near the mouth of Tallassee creek, and Slick Rock Ridge, the most prominent prong of which terminate at Tennessee River in the bend about the mouth of Rabbit creek; the most prominent trends to the west has the local name of Salt Springs mountain, and terminates about Citico creek. From the general configuration of the country, and the difference of elevation, this could not be considered the leading ridge.

Q. 21. Have you heretofore had experience in locating state lines, and if so, where and the extent of your experience?

A. I have at different times surveyed portions of the state line between Tennessee and Georgia—all amounting to about fifteen miles.

Q. 22. If the land in dispute is in Tennessee, in what land district is it located, and what knowledge have you and experience in surveying in said land district. What portion of Monroe county does said district embrace?

1975 A. It would be in the Ocoee Land District—at least the greater portion. I do not know the line between the Ocoee and Hiwassee Districts in Monroe Co. I have surveyed most of the

mountain land in the Ocoee District in Polk county—but little i
Monroe.

Q. 23. Taking the actual surveys of the lines, &c., made by yo
with Wilson and Hale, the marks found, the topography of th
country, your experience as a surveyor, and also the calls of th
commissioners locating the state line; that is "From Tennessee riv
to the main ridge and along the extreme height of the same to th
place where it is called Unicoi or Unaka mountain"—where, in you
opinion, was the state line located — the commissioners when estab
lished in 1821?

A. Crossing the river from the spruce pine marked above th
mouth of Slick Rock Creek, running to the top of the bluff on th
south side of the river; thence with the top of this leading ridg
passing the marked sourwood in Sourwood Gap, through Slick Roc
Gap, passing the marked hickory and chestnut oak stump; thenc
along this ridge over the top of the Hangover, Hao. Strutton Bal
and continuing on this same leading ridge.

Q. 24. State if J. K. Wilson and W. D. Hale were with you i
locating the line, and how long were you at work?

A. J. K. Wilson, W. D. Hale and myself made the survey jointly
We were at work a little over six weeks.

And further saith not.

O. W. MULLER.

Sworn to and subscribed before me this Oct. 13, 1896.

J. T. CARTER,
Dep. Clerk.

O. W. MULLER, Fetzerton.

2 days 3 00
192 miles 9 60

12 60

Paid by compl't.

It is agreed between counsel that counsel for defendants shall hav
the right to cross-examine the above named witness on the — da
of —— 189 —, and to except to the questions and answers made i
the foregoing examination in chief, as fully as if such exceptions ha
been made at the time each question and answer was made, and t
except generally. Oct. 13, 1896.

T. E. H. McCROSKEY,
Sol. for Compl't.
LUCKY, SANFORD & TYSON,
Solicitors for Def'ts.

No. 1056. Filed Oct. 13, 1896. J. T. Carter, Deputy Clerk.

1976 And afterwards, to wit, 23d day of August, 1898, a certai
report of Asbury Wright, Special Master, was filed in th
1977 Clerk's Office of said court, which said report is clothed in th
words and figures following, to wit:

Special Master's report: Endorsed: Report of Special Master. Filed Aug. 23, 1898, as of and for July 9, 1898. J. T. Carter, Deputy Clerk.

In the United States Circuit Court at Knoxville.

CHAS. HEBARD
vs.
D. W. BELDING et al.

Report of Referee—Under Order Entered March 30, 1898.

To the Honorable Judges of the United States Circuit Court, sitting at Knoxville, for the Northern Division of the Eastern District of Tennessee:

I respectfully report that in obedience to the order of reference in the above styled cause directing me to report to the court, "the true state line between the states of Tennessee and North Carolina, from the Little Tennessee River to the Junction of the Hangover and Fodder Stack Ridges, as run and located by the commissioners of the states of North Carolina and Tennessee, in 1821, and confirmed by the respective legislatures of said states."

I met the counsel for complainants and defendant by appointment in the court room in Knoxville on May 9th, 1898, and on the application of counsel for defendants for time in which to file additional proof I continued the hearing until June 2d, 1898. On that day I was in Knoxville and understood from defendants' counsel that they were ready for the hearing, but the sickness of Maj. Webb and the absence of Maj. McCroskey, counsel for complainant, caused me to again continue the hearing, which I set for June 9th. On June 7th, counsel for defendants filed an affidavit asking a continuance of the hearing, and that the time for taking proof be extended ten days. I granted the application, with leave to both sides to take proof until June 20th and set the hearing for June 23d, 1898. During the last continuance counsel for defendants took some depositions, which were excepted to by complainants, for want of notice, and I sustained the exceptions, whereupon counsel for defendants filed another affidavit and moved a continuance,
1978 which I refused, and heard argument of both sides at that time upon the matter to be reported upon.

Upon the hearing both sides objected to all irrelevant, hearsay and incompetent testimony. These objections were principally made by complainants, to the testimony of the witness Patton, who testified to statements of one Thos. Tatham as to how the line was run, and to witness Jones, as to why the surveyors of the Ocoee District stopped at Slick Rock Creek.

The defendants' objections being to the statements of parties living in the disputed territory as to the general reputation in the community that they lived in Tennessee, and also to the statements

of one of the surveyors of the Ocoee District as to why he stopped at Slick Rock Creek, testified to by Maj. McCroskey.

I think the reasons given by both surveyors of the Ocoee District for stopping at Slick Rock Creek are incompetent, nor do I regard as competent the testimony of the witnesses living in the disputed territory as to what state they live in. I think this matter is too recent to be proved by general reputation and that the general reputation sought to be established by this evidence, has been made very largely, if not wholly, since the dispute as to the true location of this line has existed.

The statements of Tatham, are, in my judgment, competent in so far as they show the general reputation of the location of the state line in question at the time they were made.

It was agreed on the hearing that defendants had paid taxes on the land covered by their grants for a number of years to the state of North Carolina, and that the place at which the mountain takes the name of Unicoy or Unaka, is some distance southwest of the junction of Fodder Stack and Hangover Ridges.

Counsel for both sides in presenting the case agree, as to the location of the state line northeast of the Little Tennessee River and in fact the witnesses agree on this line, which is shown by the green and brown shades on the map filed as Exhibit "A" to the deposition of W. D. Hale, and which may be called complainant's map. The defendants also file a map, Exhibit No. 1, to the deposition of H. S. Hayes. The meat in the litigation is readily seen and thoroughly illustrated by these maps. It will be seen from them that complainant is strongly attached to the mountains, while defendants are equally as fond of the creek.

1979 It is contended by complainant that the line crosses the Tennessee River at the point where it reaches it, and goes directly on to the Hangover Ridge, and thence along the extreme heights of that ridge to its junction with the Fodder Stack Ridge, while the defendants insist that the line runs down the Tennessee River before crossing it about one-half a mile to the mouth of Slick Rock Creek; thence up Slick Rock Creek five miles or more, to a small spur leading up to Big Fodder Stack; thence up this spur to Big Fodder Stack and along the Fodder Stack to its junction with the Hangover.

When the pleadings were made up the defendants claimed that the line left the Tennessee River just below the mouth of Slick Rock Creek and ran up Slick Rock Ridge to Stiff Knee, thence south along the ridge passing Little Fodder Stack to Big Fodder Stack, etc.

In fact this seems to be the line as contended for by the State of North Carolina, as it was recently surveyed up that way, (presumably by the state) and stone monuments set up to mark it, but after complainant's testimony was taken and the defendants sent surveyors on the ground, they abandoned that line and insist on the Slick Rock Creek, as before stated.

For complainant's contention the proof shows:

That the Hangover Ridge is the main ridge of the mountain be-

tween the river and the junction of the Hangover and Fodder Stack; that it is from 300 to 500 feet higher than the Fodder Stack Ridge, and that a person standing on top of the mountain where these two ridges come together and looking northeast could see no ridge except the Hangover, and would have to descend the mountain side some two or three hundred feet before he could discover that there was another ridge leading off from the main ridge. Southwest of their junction there is only one ridge leading down to the Unicoy or Unaka Mountain. It also appears that this ridge bluffs up to the river immediately opposite the point where it is agreed the state line reaches the river on the northeast side, and that it is a continuation of the ridge along the extreme height of which the line is running until it reaches the river. And to anyone approaching the river on the northeast side along the state line and looking southwest in the direction the state line was running, it would readily appear to be the main ridge. It is true that the defendants show that a ridge runs off from the Hangover Ridge at the Hao several miles from the Tennessee River down to the Cheowah River, and that it is as large or larger than the Hangover from there on to the Ten-
1980 nessee River, but as this ridge does not reach the Tennessee River, it of course could not be thought of as the "main ridge," so far as the state line is concerned. It also appears that this mountain being high and poor, the timber on the top and along the height of it is very poor and scrubby, and would not be good to hold line marks, but complainant's surveyors insist that they found at least two trees along the top of this ridge, a black or water oak and a sourwood, which show two chops above a blaze (the state line mark), and that these marks were of the proper age for the state line. The surveyors for the other side contend that these trees do not bear the state line marks. I am of the opinion that these two trees bear marks similar to those used in marking the state line and that they were marked about the year 1821.

For the line contended for by the defendants, the proof shows:

That beginning at the mouth of Slick Rock Creek, there is a well marked line up the creek for a distance of about one-third the distance they claim the line runs with the creek—say a mile and two-thirds. These trees are marked some as fore and aft trees and some as side line trees. Some of the trees are on one side of the creek and some on the other. Some of the trees marked as side line trees are nearer the creek than some marked as fore and aft trees and vice versa. These marks are similar to those used on the state line and were made about 1821. The marked trees then entirely cease for a distance of about three or three and one-half miles, or until the line leaves the creek and starts up the spur to the Fodder Stack, when a number of trees are found for a short distance leading up this spur. They bear the proper marks and age. No more trees are then found until near the top of this spur where there is one marked tree, and from that point to the junction of Hangover and Fodder Stack there are two or three marked trees. Marked trees are also found on the Fodder Stack lead northeast of the spur on which this line runs for some distance.

The surveyors who laid out the Ocoee land district in Tennessee in 1886 evidently understood that the state line run up Slick Rock Creek and up this particular spur to the Fodder Stack and thence along it, for they stopped at Slick Rock Creek and at a line substantially in accordance with the line as contended for by defendants. It also appears that since 1853, parties have been obtaining grants from the state of North Carolina for land in this Slick Rock Creek basin, both on the east and west side of Slick Rock Creek, and that deeds and conveyances made by parties in Tennessee
1981 and in complainant's claim of title have called for Slick Rock Creek since 1853, as the state line. The Slick Rock Creek basin is well timbered and along the creek where there are no marked trees there is an abundance of timber capable of holding the marks. This basin timber is very much better for holding marks than the timber on the mountain.

The marked trees found on the creek follow its course and the line for what ever purpose run and marked was evidently intended to go with the creek. The creek is about six miles long and has a number of smaller tributaries, one of them being Little Slick Rock Creek.

The witness Patton testifies that Thos. Tatham, an aged man, now dead, told him 40 years ago that he was with the commissioners who, surveyed the state line in 1821; that they "run along the main divide of the Smoky Mountains to the Tennessee River, crossed the river and marked a large pine that stood near the bank of the river near the mouth of Slick Rock Creek" 60 or 65 miles from the beginning; that they then "ran up Slick Rock Creek on the west side to the fork of the creek and crossed the west fork and struck the point of a ridge that ran down into the fork of the creek and ran up that ridge to the divide that ran up to Big Fodder Stack."

And Patton says that he run the line in 1867 on the Fodder Stack lead and traced the marked line to within 300 or 400 yards of the head of Little Slick Rock Creek, when he lost it, and went back to the ridge and run down on the line where defendants now claim it runs and thence down the creek, finding the line as found by defendant's surveyors.

I have endeavored to state as fully as practicable in the limits of this report, the evidence sustaining the contention of each party, but after all, in determining the location of a line, the most important thing to look to is the report of the party locating it. And in this case, the report of the commissioners of the states of North Carolina and Tennessee, who run the line in 1821, for I am to report the true state line from the Little Tennessee River to the junction of Fodder Stack and Hangover leads as run and located by these commissioners. I understand that calls for natural objects, if reasonably certain, must control the location of a line, unless it is shown that a different line was actually run and marked at the time, and in this character of case, unless it is shown that the line so run and marked was actually adopted as the line by the parties in making their report.

After a careful consideration of the whole case, I am of the opinion

and so report that the line between the states of Tennessee
1982 and North Carolina from the Little Tennessee River to the junction of the Hangover and Fodder Stack Ridges, as run and located by the commissioners of said states in 1821, and confirmed by the respective legislatures of said states, crosses the Little Tennessee River at the point where it reaches the river on the northeast side, and from the river runs up the Hangover lead, as shown on complainant's map, and along the extreme heights of this ridge, passing the black or red oak, Slick Rock Gap, Cold Springs Knob, Big Flat Knob, Hangover, Haõ, Grassy Gap and Stratton Bald, to the junction of the Hangover with the Fodder Stack.

The contention of the defendants has been presented in the record, and before me, with much learning and ability and with great earnestness. In deference to which I will give some of the reasons for my conclusions.

The Act of North Carolina of 1789 ceding to the national government the territory now comprising Tennessee, fixes the eastern boundary line as follows: "Beginning on the extreme heights of Stone Mountain at the place where the Virginia line intersects it, runing thence along the extreme height of said mountain to the place where the Watauga River breaks through it; thence a direct course to the top of the Yellow Mountain where Brights' road crosses the same; thence along the ridge of said mountain, between the waters of Doe River and the waters of Rock Creek to the place where the road crosses the Iron Mountain; from thence along the extreme heights of said mountain to where Nolichucky River runs through the same; thence to the top of the Ball Mountain; thence along the extreme height of said mountain to the Painted Rock on French Broad River; thence along the highest ridge of said mountain to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of the said mountain to the place where it is called Unicoy or Unaka Mountain between the Indian towns Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this state." It is very evident that the intention was to fix the Western boundary line of the State of North Carolina and the eastern boundary of the ceded territory along the top of the mountain range, which runs across the state from northeast to southwest, so that the extreme top of the mountain should be the boundary. The line now in question is included in the following call of the Cession Act: After getting on the Great Iron or Smoky Mountains: "Thence along the
1983 extreme height of said mountain to the place where it is called Unicoy or Unaka Mountain."

The constitution of the State of Tennessee adopted in 1796, with a slightly fuller description, shows clearly a fixed purpose to keep the line on the extreme top of the highest dividing mountain, and for the line in question uses the same description as is contained in the Session Act. In 1805, the legislature of Tennessee by act, appointed two commissioners to act in conjunction with a similar commission from the State of North Carolina, if one should be appointed to designate the dividing line between the two states for

a given distance (not including the line in question) and they were to do so "agreeably to the Act of Cession."

In 1796, the legislature of North Carolina passed an act appointing commissioners to meet a commission from Tennessee to fix the line as described in the Cession Act, and again in 1819, the legislature of North Carolina, passed an act constituting a commission to meet a similar commission from Tennessee to "settle, run and mark the boundary line between this state and the state of Tennessee agreeably to the true intent and meaning of the act of the general assembly of this state entitled 'An act for the purpose of ceding to the United States of America certain western lands therein described.'"

This is the act under which the North Carolina commissioners who assisted in the survey of 1821, were appointed.

Commissioners on the part of Tennessee were appointed, and acting in connection with these North Carolina commissioners, the survey of 1821 was made, and each set of surveyors reported to their respective states and their reports were adopted. They are identically the same in description with the exception of some few differences in the spelling of proper names, and with the further exception that the North Carolina commissioner's report after the description, the following, "the whole distinctly marked with two chops and a blaze on each fore and aft tree and three chops on each side line tree and mile marked at the end of each mile." The full description of the survey as adopted by both legislatures was as follows: "Beginning at a stone set up on the north side of Chataloochee turnpike road and marked on the west side 'Ten. 1821,' and on the east side 'N. C. 1821,' running thence on a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smoky Mountains, and continuing southwestwardly on the extreme heights thereof to where it strikes Tennessee river, about seven miles above the old Indian town of Tallassee, crossing Porter's Gap at a
1984 distance of 22 miles from the beginning, passing the Meigs boundary line at 31½ miles, the Equonettly path at 53 miles and crossing Tennessee river at the distance of 65 miles from the beginning, from the Tennessee river to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain, striking the old trading path leading from the valley towns to the over-hill towns near the head of the west fork of Tellico river and at the distance of 93 miles from the beginning; thence along the extreme heights of the Unicoy or Unaka Mountain to the southwest end thereof at the Unicoy or Unaka turnpike road, where a corner stone is set up, marked 'Ten.' on the west side and 'N. C.' on the east side, and where a hickory tree is also marked on the south side "Ten. 101 M." and on the north side "N. C. 101 M.," being 101 miles from the beginning; from thence a due course south two miles and 252 poles to a spruce pine on the north bank of the Hiwassee river below the mouth of Cane creek; thence up the said river the same course about one mile and crossing the same to a maple marked "W. D. & R. A." on the south bank of the river; thence continuing the same course due

south 11 miles and 273 poles to the southern boundary line of the state of Tennessee and North Carolina, making in all 116 miles and 228 poles from the beginning, and striking the southern boundary line 23 poles west of a tree in said line, marked "72 M." where was set up by said commissioners a square post marked on the west side "Ten. 1821." and on the east side "N. C. 1821," and on the south side "G."

It must be kept in mind that these commissioners were not making a new line, but were simply determining the true location of the line fixed by the Cession Act of 1789. They got on top of the Great Iron or Smoky Mountain and were then to determine the true location of the line between that point and the Unaka Mountain, and to do so, they were to run along the extreme height of the mountain. They report that they run on the extreme height of the mountain to where it strikes the Tennessee river, and the river being a natural object, permanent and notable, they stop in their description to call attention, particularly and minutely to the several prominent and notable objects passed. The first reference to the Tennessee river is "to where it strikes the Tennessee river," and the next is "crossing the Tennessee river," and then the reports says, "from the Tenn. river" and yet if the line was run up Slick Rock Creek, as contended for by defendants, then either before crossing the river or afterwards, the line would have had to run down
1985 the river one-half mile, and this not in the general course the line was running (southwestwardly) but back at an acute angle to the line run and in a northwest course, and in running down the river and up Slick Rock creek they would not have been running as the line called to run in the Cession Act, along the extreme height of the mountain to where it is called Unaka, but for one-half a mile would have been running down a large river in the deep gorge cut through the mountain, and for more than five miles up Slick Rock creek in a basin or valley 6 miles long and three miles wide, surrounded by mountains from one to three thousand feet high. It would certainly not have been in compliance with the Cession Act. It is true that it is my purpose to determine where they actually run and located the line and not whether they complied with the Cession Act, but I can not believe that they would abandon the line called for in the Cession Act, and be diverted from their course in this way, and make no mention of it in their report. They had just paused in their report to make particular mention of many objects, less prominent and less noteworthy, than either the Tennessee river or Slick Rock creek. Then mention the fact that they reach the Tennessee river that they cross it and that they leave it, and I do not believe that they would have run down the river for one half a mile and made no mention of that fact, nor do I believe that they would have run for five miles up Slick Rock creek, a creek with numerous tributaries, apparently of considerable size, so large in fact, that there is another creek in the same basin called Little Slick Rock, and not have mentioned it in their report. After this call has reached Unaka Mountain they are particular to call attention to every object that could give permanency and notoriety to

the location and when they reach the Hiwassee river, which at that point is running the same course as the line they were running, and they go up the river about one mile, they call attention to the fact (the river was then running in their direction. See Gov. Map, Exhibit "G," to Dep. H. S. Hayes), and if necessary to call attention to the fact when the river was in direct course, how much more necessary it would have been when by following it the line is deflected and caused to turn back at an acute angle. In running up Hiwassee river they pass the mouth of Cane Creek and they mention this fact, and yet, shall we say they run up Slick Rock creek for five miles and made no mention of that. As soon as Hiwassee river, by a bend, leaves the general course of the line, being run they leave the river. They were not running with rivers they
1986 were locating a line that was to be run along the tops of the mountains. But again, the line runs "from the Tennessee river to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain." How shall it get to the main ridge, by running down the river and up Slick Rock creek to a spur of Fodder Stack and thence to its junction with Hangover? I am satisfied from the proof that the Hangover is the main ridge, and that to get on the main ridge, they would have had to be on the Hangover either before or after its junction with the Fodder Stack, and according to the proof, when they came to the river on the northeast side and looked across, there directly opposite them was a continuation of the same ridge along the height of which they were running. This main ridge was on the southwest side of the river higher than it was on the northeast side and run in the general course of the line they were running. They were locating a line which was to run along the extreme height of the mountains from the Great Iron or Smoky Mountains to the Unaka, and at the time the line strikes the Tennessee river they say they are on the extreme height of this mountain and immediately across the river is the same mountain some higher, but the same, and I think that unquestionably this is the main ridge or mountain on which they say they run and located the line.

There are other reasons disclosed by the record of greater or less weight to the same effect.

There are more marked trees on the Slick Rock creek line than on the Hangover, but I am inclined to believe from the record that it would not be safe to attempt to pull this line away from the well defined natural objects to follow marks as shown on either line. This section of country was inhabited by the Indian tribes until 1836 or '37, and is crossed by numerous trails and paths, and numerous marks are found similar to these state line marks.

The defendants' witness, Patton, testifies to following the state line marks in 1867 along the Fodder Stack lead to within 300 or 400 yards of the head of Little Slick Rock creek, which would be two or three miles further along this lead than where the defendants' marked line leaves it. There are many ways in which these marks could have been placed there without having been made by these state commissioners, but if made by them it was evidently run as a

tentative line, and not adopted or reported by them, and if they are to mark the line actually run and adopted, why did they mark so carefully for a mile and a half then not mark any trees for
1987 three or three and a half miles. There was an abundance of timber all the way, that they might have marked.

This Slick Rock creek basis appears to be a wild and almost uninhabited section now, and in 1836 still occupied or only recently vacated by the Indians. When the Ocoee district was surveyed it must have been much more so, and the parties surveying the district doubtless knew little of the location of the state line. I do not attach very great importance to the statements Tatham made 36 years after the survey to Mr. Patton 40 years ago. Human memory is too uncertain, especially for such a length of time, to determine the location of a line, contrary to its calls for natural objects, besides the report of the Tennessee commissioners embodied in the act of 1821, shows that Tatham was not one of the commissioners—the Tennessee commissioners being Alexander Smith, Isaac Allen and Simeon Perry, and those for North Carolina, James Mebane, Montfordh Stokes and Robt. Love.

Upon the whole the conclusion I have herein announced is the one I believe is warranted by the record. A number of questions are raised in the pleadings and arguments, such as adverse possessions, estoppel, etc., but I have not considered them because I do not understand that they are included in the matter referred to me.

All of which is respectfully submitted.

July 7th, 1898.

ASBURY WRIGHT,
Special Master.

1988 In the U. S. Circuit Court, at Knoxville, Tennessee.

CHARLES HEBARD
vs.
D. W. BELDING et al.

Supplemental Report of Referee Under Order Entered March 30th, 1898, and Order Entered September 13th, 1898.

To the Honorable the Judges of the U. S. Circuit Court, Sitting at Knoxville, for the Northern Division of the Eastern District of Tennessee:

I respectfully report that in obedience to the order entered in this cause on September 13th, 1898, again referring to me the case on the question submitted in the first reference, and directing me to examine the proof taken by the parties since my report was filed, and to hear arguments thereon if desired, and report whether upon said proof I would change the report which I have already filed, and if so, to what extent.

On September 13, 1898, at the request of the counsel for both parties, after having read the proof taken since my last report I heard the counsel in the Court Room at Knoxville argue the question

upon the additional proof filed, and in fact, upon the whole record covering the question submitted to me. I have delayed filing this supplemental report at the request of counsel for the defendants, who desired to file with me a written brief supplemental to the oral argument made by them. This has been handed to me and I have endeavored to again carefully consider all the proof bearing on the question submitted, and especially the proof taken since the filing of my report, and after a consideration of the whole matter, I am satisfied with the conclusion of the question as stated in my first report and therefore report that I will make no change in said report.

Respectfully submitted this November 21st, 1898.

T. A. WRIGHT,
Special Commissioner.

(Endorsed:) No. 1056. Sup. Report of Com. Chas. Hebard vs. D. W. Belding, et al. In Circuit Court, U. S. Filed Nov. 23, 1898. J. T. Carter, Deputy Clerk.

1989

CHARLES HEBARD
vs.
D. W. BELDING et al.

After careful consideration of this case, I reach the conclusion that I am not warranted upon the facts in differing from the commissioner in the view which he takes of the case? It is a very close one on the facts, and the equity of the case is rather with the defendants in view of the facts that they obtained their grant earlier, and have been paying taxes upon the property while the plaintiff's grant was only recently obtained. If there was a basis for estoppel, or if the doctrine of estoppel could be applied to the state of Tennessee, a different question might arise growing out of the fact that the state has, through the Ocoee District Commissioners established its line at Slick Rock Creek, and has sectionized all of the territory supposed to belong to the state. In the absence, however, of any ground on which an equitable view might be taken of the situation, I am constrained to believe that the weight of evidence is with the plaintiff as to the true location of the state line. I do not underestimate the great force found in the better marked line of the defendant. It must not be forgotten, however, that the commissioners in surveying and making the line, followed the mountain range down to the Tennessee River, and that according to the calls actually made, they would cross that river and proceed along the mountain crest where complainants contend the line is. It was the crest of this same mountain range which brought them to the river and it was the obvious and conspicuous range to have followed by directly crossing the river and keeping up the previous course. It is extremely difficult to believe that the commissioners at this point would have dropped down the river for half a mile and then followed Slick Rock Creek for a distance of five or six miles without ever making the slightest reference to this water stream. Granting as argued that the creek may, at that time have had no name whatever, nevertheless it

would have been so natural and not necessary to avoid misleading for the commissioners to have said that they changed their course, and instead of going directly across the river went down and then followed a creek or water stream up the valley and then to the ridge which led out to the junction, that it is next to impossible to think that such a deviation as this would have been made without a word to give any indication of the fact. Following the calls as
1990 actually given it would be impossible to run the line as claimed by the defendants.

Looking at the case then from the legal point of view (and no other, it seems permissible), I am certain that by the weight of the evidence the case is with the complainants.

As I concur with the commissioner in the reasons which he gives, as well as the conclusion at which he arrives, it is not necessary that I should go over the grounds separately. It results therefore that the exceptions to the commissioner's report are overruled, the report confirmed and decree will go accordingly.

I think the costs of the commissioner's report should be divided and the general cost should follow the result of the suit, and it is adjudged accordingly.

CLARK, *J.*

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding. Opinion. Filed Apr. 25, 1899. J. T. Carter, Deputy Clerk.

1991 In the United States Court, at Knoxville, Tennessee.

CHARLES HEBARD
vs.
D. W. BELDING et al.

Be it remembered that this cause came on to be heard and determined before the Honorable C. D. Clark in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on this 10 day of June, 1899, upon the report and supplemental report of the Special Commissioners T. A. Wright, as to the location of the state line, the exceptions to said reports filed by the respondents, and the court being of the opinion that the said exceptions are not well taken and the court concurring with the Special Commissioner in his reasons and conclusions, it is pleased to disallow and overrule the said exceptions, and said reports are in all things confirmed.

And the cause coming on to be further heard upon the original bill, pleading answer and proof and upon the whole record, from all of which it appears that it is a contention; as to the true location of the state line petween Tennessee and North Carolina run-
1992 ning South or Southwest from the Little Tennessee river, and between the said river and the junction of the Hangover and Fodder Stack Ridges, said junction being about ten miles southwest of the river.

After hearing the cause, argument of counsel and mature deliberation, the court is of the opinion, and doth so adjudge and decree that the state line between the states of Tennessee and North Carolina as run and located by the Commissioners of said states in 1821, *is* as found by Special Commissioner T. A. Wright, is as follows: Crossing Little Tennessee river at the point where it reaches the river on the North east side, and about one-half mile above where Slick Rock creek empties in said river; and from the river runs up the Hangover ridge or lead and along the extreme height of the same, passing the black oak or red oak, passing Slick Rock Gap, Cold Springs Knob, Big Fat Knob, Hangover Ridge, Hao, Grassy Gap, and Stratton Bald to a junction of the Hangover Ridge with the Fodder Stack Ridge; and all the lands lying west or northwest of said Hangover Ridge, including Slick Rock basin, is in the state of Tennessee.

And it, further appearing to the court, that complainant Chas. Hebard, acquired title to the lands in dispute in Slick Rock creek basin by and through grants from the state of Tennessee, and that said lands are within the lines and boundaries of said state; and that the defendants, D. W. Belding, M. M. Belding, Henry Stix, Nathan Stix, Levi Kohn, D. W. Hyman, Mary Bragg, R. L. Cooper and J. W. Cooper acquired title to the lands in dispute in said Slick Rock Basin by and through the grants from the state of North Carolina and that said lands are not within the lines and boundaries of said state.

It is therefore -judged and decreed that the titles of the complainant to said lands are valid and that the titles of defendants are void, and that the defendants have established no defense to the suit, either by adverse possession or otherwise, and that complainant is entitled to the relief sought.

And it is further adjudged and decreed that complainant have and recover of said defendants all the lands in Slick Rock creek basin more particularly described as follows: Beginning on the Tennessee river now called the Little Tennessee river, at the point where the line between the states of Tennessee and North Carolina crosses, opposite a marked Spruce Pine now blocked out about one-half mile above the mouth of Slick Rock creek; running thence up the Hangover Ridge or lead, and along the extreme height of the same passing the black oak or red oak, passing Slick Rock Gap, Cold Springs Knob, Big Fat Knob, Hangover, Hao, Grassy Gap and Stratton Bald to the Junction of the Hangover Ridge
1993 with the Fodder Stack Ridge; thence along Big Fodder Stack Ridge to Little Fodder Stack Ridge to the point called Stiff Knee; thence along Stiff Knee Ridge to the ridge turning eastwardly towards the mouth of Slick Rock creek; thence along said ridge to the point where it reaches the Tennessee river below and near the mouth of Slick Rock creek; thence up *to* the river to the beginning.

And upon demand of complainant a writ of execution or possession will issue to put complainant in possession of said lands

It is further adjudged that defendants pay all the costs of this

cause except the compensation of Special Commissioner T. A. Wright, which is hereby fixed at the sum of 300.00 which will be divided, complainant paying one-half and defendants one-half of the same, for all of which execution will issue. On the trial of this cause, both before the Special Commissioner and the court, complainant excepted to all that part of the evidence of the witnesses, J. W. Patton, Jas. McDaniel, Jas. Whitaker, W. P. Phillips, W. P. Jones, M. L. Britton, J. H. King, H. S. Hays, Stephen Whitaker, in which it was sought to prove the declarations of others as to the location of the state line because said evidence was hearsay and for that reason incompetent evidence, also the maps of topographical surveys by the U. S. survey because the same is not binding upon the states or parties to this cause and cannot be competent evidence. The court concurs in and adopts the rulings of the Special Commissioner on these exceptions of the complainant to which action of the court the complainant excepts and the defendants except in so far as the court excludes said testimony.

By agreement of counsel all exceptions to the testimony were reserved until the hearing before the court. On the hearing the defendants excepted to the evidence of the witness, James Farr as to his understanding of the location of the state line on the Hangover Lead, on the ground that said evidence was incompetent and irrelevant because:

1st. It is not shown to be based upon general reputation, or the statements of ancient persons shown to have been familiar with the state line is clearly incompetent; and because:

2nd. It is shown on the cross-examination of the witness that the only person that he ever heard say that the state line ran along the Hangover Ridge was old man Nelson, Marion Carriger and perhaps Andy Carriger and these persons are not shown to be dead, two of them, in fact, having been shown to be living by another wit-
1994 ness, nor are they shown to have had any special acquaintance with the state line; hence proof of their statements does not constitute proof of general reputation, and it is hearsay evidence incompetent and inadmissible.

The defendants also excepted on the hearing to the statement of Emerson Debity that he understood the location of the state line to be on the Hangover lead, and to the statement of B. B. Nichols that he understood the state line to be east of Slick Rock creek, and the statement of Samuel Blair that he considered the line in dispute as lying in Tennessee, and the statement of John Debity that he understood the state line to be the Hangover, on the ground that none of these witnesses pretend to state the general reputation, which alone would be competent on this question, that the witnesses are mostly young men and are not shown to have any knowledge of ancient tradition, and that the particular understanding of all these witnesses at this late period is wholly incompetent, irrelevant and inadmissible.

The defendants also excepted on the hearing to the statement of the witness Boyd McMurray that James Miligan told him that the state line was on the Hangover, and that he has since that time understood that to be the state line and that Isaac Carriger told him

that the Hangover was the state line and pointed to a tree near the trail and said it was on the state line and that Mr. Hoyt told him that he had located the state line on the Hangover Lead and the further evidence of this witness as to Mr. Hoyt's statements as to the marks on Slick Rock creek on the ground that said evidence is hearsay, incompetent and irrelevant not being based on general reputation and being simply the particular understanding of this witness and hearsay testimony as to statements made by persons not shown to have had any particular means of information as to the location of the line nor to have been familiar with it and that this evidence does not come within any exceptions to the general rule excluding hearsay testimony.

The court sustained each and all the foregoing exceptions made by the defendants and excluded all the foregoing testimony by consent of parties it is further ordered that on any appeal taken by any of the parties the clerk will send up to the Court of Appeals with the transcript all the maps offered in evidence by either the complainants or defendants and also all the blocks of wood and bark put in
1995 evidence by any of the parties and said maps and blocks are hereby made a part of the transcript.

Enter this.

CLARK, *Judge*.

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Charles Hebard vs. D. W. Belding, et al. Decree entered Journal "R," page 107. Filed 10th day of June, 1899. J. T. Carter, deputy clerk.

1996 And on the same day, to wit on July 13, 1900, an opinion was filed clothed in the words and figures as follows:

Opinion.

United States Circuit Court of Appeals for the Sixth Circuit.

D. W. BELDING et al., Appellants,
vs.
CHARLES HEBARD, Appellee.

Opinion.

Decided July 13, 1900.

Appeal from the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

This is a bill to restrain trespass and remove a cloud from the title to a large tract of wild mountain land claimed to lie within the Seventeenth civil district of Monroe county, Tenn. The complainant claims title under a grant from the state of Tennessee. The defendants claim title to the same under a grant from the state of North

Carolina. The title turns upon the location of the boundary line between the state of North Carolina and the state of Tennessee, and the object of the bill is to have the state line ascertained and determined between the Little Tennessee river and this mountain peak called "Stratton Bald," a distance of some seven or eight miles from the point where the state line crosses the Little Tennessee river. The claim of the complainant, Charles Hebard, is that the said state line crosses the Little Tennessee river about one-half mile below where Slick Rock creek runs into the river; thence directly to the Hangover ridge, and along the extreme height of that ridge to its junction with another ridge called the "Fodder Stack Ridge." This contention, if sustained, places the lands lying between the Hangover ridge and Slick Rock creek within the state of Tennessee, and confirms the title to Hebard under his Tennessee grant. The defendants, on the other hand, contend that the line crosses the little Tennessee river
1997 at or near the mouth of Slick Rock creek, and runs up said creek, following its meanders, something over six miles then up a ridge leading from the creek to the Big Fodder Stack, and then southwesterly with the top of the Big Fodder Stack lead to its junction with the Hangover lead. In other words, defendants insist that for a distance of nearly six miles the state line follows Slick Rock creek, and that the lands lying east of the creek, and between it and the crest of the Hangover spur, were on the North Carolina side of the line, and therefore subject to grant by North Carolina.

The territory now comprising the state of Tennessee was ceded by the state of North Carolina, in 1789, to the United States. The cession act describes the eastern boundary line as follows: "Beginning on the extreme height of the Stone Mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain to the place where the Wautauga river breaks through it; thence a direct course to the top of the Yellow Mountain, where Bright's road crosses the same; thence along the ridge of said mountain, between the waters of Doe river and the waters of Rock creek, to the place where the road crosses the Iron Mountain; from thence along the extreme height of said mountain to where Nolinchucky river runs through the same; thence to the top of the Bald Mountain; thence along the extreme height of the said mountain to the Painted Rock, on French Broad river; thence along the highest ridge of the said mountain to the place where it is called the 'Great Iron' or 'Smoky' Mountain; thence along the extreme height of the said mountain to the place where it is called 'Unicoy' or 'Unaka' Mountain, between the Indian towns Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this state." The line here to be ascertained is included within the call beginning "thence along the extreme height of the said mountain to the place where it is called Unicoy or Unaka Mountain." The mountain whose extreme height is to be followed until Unaka Mountain is reached is the "Great Iron or Smoky Mountain." The necessity for a definite location and marking of the line became evident to both states, and in 1821, under acts passed by each state a joint commission was appointed for the pur-

pose of settling, running, and re-marking the boundary line. The Tennessee commissioners were appointed under an act which provided that the commissioners should "settle, run and re-mark the boundary line between this state and the state of North Carolina, agreeably to the true intent and meaning of the said act of the general assembly of the state of North Carolina, entitled: 'An act for the purpose of ceding to the United States of America cer-
1998 tain western lands therein described.'" Acts Tenn. 1820, c. 22. The North Carolina act, providing for the running of the line, was substantially identical with the Tennessee statute above set out. 2 Ired. & B. Rev. St. N. C. p. 94. The joint Commissioners did run and remark the line, and each state passed an act ratifying, confirming, and adopting the line as run and reported by the commissioners. Acts Tenn. 1821, p. 45, c. 35; 2 Ired. & B. Rev. St. N. C. p. 96. The Tennessee confirmatory act is as follows: "Be it enacted by the general assembly of the state of Tennessee, that the dividing line run and marked by Alexander Smith, Isaac Allen and Simeon Perry, commissioners for and on behalf of this state, and James Mebane, Montfort Stokes and Robert Love, commissioners for and on behalf of the state of North Carolina, which dividing line, as run by said commissioners, begins at a stone set up on the north side of Cataloochee turnpike road; and marked on the west side, 'Ten., 1821,' and on the east side, 'N. C., 1821'; running thence on a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee river, about seven miles above the old Indian town of Tallassee, crossing Porters Gap at the distance of twenty-two miles from the beginning, passing Meigs' boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles, and crossing Tennessee river at the distance of sixty-five miles from the beginning; from Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the 'Unicoy' or 'Unaka' Mountain, striking the old trading path leading from the valley towns to the overhills towns, near the head of the west fork of Tellico river, and at the distance of ninety-three miles from the beginning; thence along the extreme height of the Unicoy or Unaka Mountain to the southwest end thereof, at the Unicoy or Unaka turnpike road, where a corner stone is set up marked 'Ten.' on the west side, and 'N. C.' on the east side, and where a hickory tree is also marked on the south side 'Ten., 101 M.,' and on the north side 'N. C., 101 M.,' being one hundred and one miles from the beginning; from thence a due course south two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee river, below the mouth of Cane creek; thence up the said river the same course about one mile, and crossing the same to a maple marked 'W. D.' and 'R. A.,' on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the state of Tennessee and North Carolina, making
in all one hundred and sixteen miles and two hundred and
1999 twenty-three poles from the beginning, and striking the southern boundary line twenty-three poles west of a tree in

said line marked '72 M.,' where was set up by said commissioners a square post, marked on the west side 'Ten., 1821,' and on the east side 'N. C., 1821,' and on the south side 'G.,' be, and the same is hereby ratified, confirmed and established as the true boundary line between this state and the state of North Carolina." The boundary is described in the North Carolina confirmatory act in words identical with those used in the Tennessee act, but concludes with these words: "The whole distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line tree, and mile marked at the end of each mile." That part of the line here involved begins with the words, "from Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the 'Unicoy' or 'Unaka' Mountain."

After some evidence had been taken, the circuit court "ordered that the cause be, and hereby is, referred to Asbury Wright, Esq., of Roane county, Tennessee, as special master, who will, from the proof on file and such other proof as shall be offered by the parties, report to the court the true state line between the state of Tennessee and the state of North Carolina, from the Little Tennessee river to the junction of the Hangover and Fodder Stack ridges, as run and located by the commissioners of the states of North Carolina and Tennessee in 1821, and confirmed by the respective legislatures of said states." A great mass of evidence was taken, and from the entire evidence the special master reported "that the line between the states of Tennessee and North Carolina, from the Little Tennessee river to the junction of the Hangover and Fodder Stack ridges, as run and located by the commissioners of said states in 1821, and confirmed by the respective legislatures of said states, crosses the Tennessee river at the point where it reaches the river on the northeast side, and from the river runs up the Hangover lead, as shown on complainant's map, and along the extreme heights of this ridge, * * * to the junction of the Hangover with the Fodder Stack." This report included a full finding of the facts material to the conclusion reached, some of which will be hereafter referred to. The defendants excepted generally and specially to the findings and conclusions of the master. These exceptions were overruled, and the conclusions of the master adopted, and a decree pronounced establishing the title of complainant. From this decision the defendants have appealed.

2000 Before Taft,[1] Lurton, and Day, Circuit Judges.

LURTON, *Circuit Judge*, after making the foregoing statement of the case, delivered the opinion of the court.

The intention of the North Carolina cession act of 1789 was to make the crest of the great mountain ranges extending across the state of North Carolina in a southwestwardly direction the boundary line of the ceded territory. This is most evident from even a casual reading of the boundary line therein described. The Painted Rock

[1] This case was decided before Judge Taft resigned.

on the French Broad river is a natural monument of great notoriety. From that point the calls in the cession act are "Thence along the highest ridge of said Mountain to the place where it is called the 'Great Iron' or 'Smoky' Mountain; thence along the main ridge of said mountain to the place where it is called 'Unicoy' or 'Unaka' Mountain, between the Indian towns Cowee and Old Chota." The part of the great mountain range called "Smoky Mountain" is well known as is also that part of the same range southwest of Smoky Mountain called "Unicoy" or "Unaka" Mountain. There is no trouble about the location of these two great natural monuments in the line. The distance between the two is not less than 50 miles, and the only call which is locative of the line between the two is that the line is to run along "the extreme height of the said range, theretofore called the 'Great Iron' or 'Smoky' Mountain, to that part of the range or ridge called the 'Unicoy' or 'Unaka' Mountain." The commissioners representing the two states were not authorized to agree upon a boundary, but to "settle, run and remark the boundary line * * * agreeably to the true intent and meaning" of the said cession act of 1789. It was clearly their duty to run and mark a line between the Great Smoky and Unaka Mountains "following the extreme height" of the mountain range connecting these two prominent points.

The line located by the commissioners, as shown by the two acts adopting it as the boundary between the two states, begins at a stone set up on the north side of Cataloochee turnpike, and properly marked. The course of the line from that stone for a distance of 101 miles is "southwestwardly," as repeatedly stated in the boundary acts referred to. From the Cataloochee stone the call is to run southwestwardly "to the Bald Rock on the summit of the Great Iron or Smoky Mountain," and continuing southwestwardly "on the extreme height thereof to where it strikes the Tennessee river. * * * crossing Tennessee river at the distance of sixty-
2001 five miles from the beginning." Between the Bald Rock and the Tennessee river several points on the line are called for, but we need not concern ourselves with them inasmuch as the line to the Tennessee river is undisputed, and is not here involved. The point where the commissioners' line reaches the Tennessee river, now known as the "Little Tennessee River," is one of the fixed and settled questions on this record. The line on the northeast side of the river is well located, and a fore and aft state-line pine tree is standing very near the bank of the river, one-half mile below the point where Slick Rock creek empties into the river on the opposite side. The special master reports that this pine tree on the northeast bank of the river is a state-line tree, marked as a state-line fore and aft tree, the marks showing by annular lines that it was so marked in 1821. He also reports that the parties agreed before him that the line was well established to that tree. The controversy begins, then, at the point where the line reaches the Tennessee river at this well-established monument. The next point in the line as located by the commissioners upon which all parties agree, is the point where two ridges make a junction southwest of the

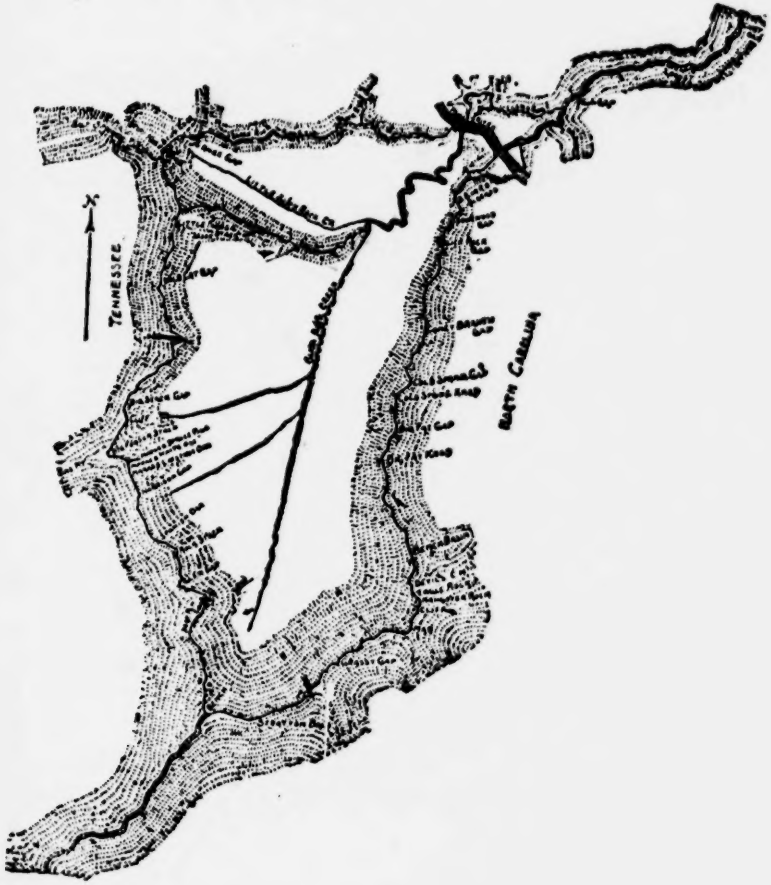
Tennessee river. One of these ridges is known as the "Hangover" and the other as the "Fodder Stack." This point of junction is about nine miles from the fore and aft pine tree on the northeast bank of the river. The disagreement is as to the true location of the commissioners' line between these two well-located points in the line. Returning to the line as located by the joint commission we find the next call, after striking the Tennessee river, is in these words: "From Tennessee river to the main ridge and along the extreme height of the same to the place where it is called the 'Unicoy' or 'Unaka' Mountain." Just here it may be observed that the Unicoy or Unaka Mountain is about 15 miles in a southwesterly course from the junction of the two ridges spoken of heretofore. How did the commissioners locate the line between the Tennessee river and the Unaka Mountain? It is to be borne in mind that their authority was to "settle, run, and re-mark" the line "agreeably" to the cession act. The Tennessee river was a water course which cut a deep gorge through the main mountain range which the line was following between the Smoky and the Unicoy Mountain. The cession act placed the boundary "along the extreme height of said mountain (that is, the Great Smoky) to the place where it is called 'Unicoy' or 'Unaka' Mountain." It was the duty of the commissioners to locate the line "agreeably" to this call. They had been following the extreme height of the ridge between the Smoky
2002 and the Tennessee river. The river cut through the ridge by a deep gorge, the mountain on either side gradually lowering, and terminating at the river in a bluff. The last monument on the northeastern side is a tree marked as a fore and aft tree. A fore and aft tree is a tree in the line, and the chops are on the sides showing the direction of the line. The chops on this tree indicated that the line there crossed the river. The general course of the line, as called for by the call which brought the line to the river, was southwesterly, and this course was to be continued to the Unaka. The course would therefore, require the line to there cross the river, as also indicated by the chops on the tree. The general direction of the cession act would keep the line on the extreme height of the mountain ridge or range. Immediately across the river, and in the general course of the line, was the Hangover ridge. This ridge is joined by another ridge called the "Fodder Stack," some eight or ten miles southwest. Its height increases after it leaves the river and the highest points between the river and the junction with the Fodder Stack are the Hangover and Hao peaks, the former having an altitude of about 4,500 feet. From the point where it is joined by the Fodder Stack ridge or spur, it is admittedly the main ridge, and further southwest becomes the Unicoy or Unaka. From the river the general course of Hangover is southwesterly, and therefore in the general course of the line as described in the cession act. One-half mile below the state-line fore and aft tree, a creek known as "Slick Rock Creek" empties into the river on the opposite side. That creek is some eight or ten miles in length, and has one or more branches. A short distance below its mouth a low spur approaches the river, called "Slick Rock Spur."

being a spur of Fodder Stack ridge. Some seven miles up the creek another spur of Fodder Stack is found. The basin of the Slick Rock is about eight miles long and three miles wide. It is bounded on the south and southeast by the Hangover ridge, on the north and northwest by the Fodder Stack ridge, and on the north and northeast by the Tennessee river and the Slick Rock ridge. The mountains shutting it in are from 1,000 to 4,000 feet high, and the basin itself is a rough, broken mountain valley almost impenetrable by man. The master reports that the Hangover ridge was the main or highest ridge, having an average height of 800 feet greater than the Fodder Stack.

It is admissible, in locating a line, where a difficulty exists in identifying monuments, natural or artificial, to run the line in a reverse way, if thereby doubts may be the better solved. "The 2003 foot-steps of the original surveyor may be traced backward as well as forward." Ayers v. Watson, 137 U. S. 584, 590, 11 Sup. Ct. 201, 34 L. Ed. 803; Coal Co. v. Doran, 142 U. S. 417, 12 Sup. Ct. 239, 35 L. Ed. 1063. So any ascertained monument may be adopted as a starting point, where difficulty exists in ascertaining the lines of a survey as actually run. Ayers v. Watson, 137 U. S. 584, 11 Sup. Ct. 201, 34 L. Ed. 803. We have two established points in the line as actually run by the state commissioners of 1821, between which points the disputed line exists. One point is the fore and aft tree on the northeastern side of the Tennessee river, and the other is some eight miles southwest from that tree, being the well marked line on the height of Hangover, where a junction is made with the Fodder Stack ridge. If we reverse the survey, and take this junction of the two ridges, or leads, as they are sometimes called, as a starting point in running backwards, one cannot doubt but that the line should follow Hangover to the river. The Fodder Stack ridge would not be observed by surveyors who had reached that point while following the highest ridge from Unicoy or Unaka, for it branches off several hundred feet below the crest of the Hangover, and the fact that a spur was there could only be learned by going down the mountain from three to four hundred feet. To abandon the Hangover in running backwards would also involve a change in direction from northeast to north, and then northwest and then west, and the Tennessee river would not be reached at all but by again diverging and following one or other of two lateral spurs. This situation is most plainly shown by the map of appellees, adopted by the master, as correctly showing the general course of the ridges or leads at the locality in question. This map is here shown upon a much reduced scale.

If the joint commissioners obeyed the call to follow the highest mountain tops, and adhered to the course pointed out in the cession act, they undoubtedly located the line on the Hangover; and if we follow the line which they reported and adopted, whether we endeavor to track them backward or forward, we must conclude from the call for the "main ridge" and "along the extreme height thereof," in the act adopting their survey, that they did in fact locate the line on the Hangover between the river and the junction of the

Hangover and the Fodder Stack. The Hangover is undoubtedly the "main ridge" called for in the survey made by the commissioners, and definitely locates the line, unless there appears such definite and positive evidence of another and different actual location
2004 of the line as to justify us in finding that the line as described and located by natural monuments is not in fact the line actually run and marked and adopted by the commissioners. Every presumption is that the commissioners obeyed the directions of the cession act, and so, also, every presumption is that the line as actual run, marked, and adopted was a line which conforms to the call to follow the extreme height of the "main ridge" from the Tennessee river to Unaka.



But appellants say that they have shown a well-marked line from the mouth of Slick Rock creek, which follows the meanders of

that creek for about seven miles, and then runs up a spur of the
Fodder Stack, and connects with that ridge at the peak called
2005 "Little Fodder Stack." The Fodder Stack ridge does not
run to the Tennessee river at all. North of the peak called "Little Fodder Stack" its general course is to the northwest. It cannot, therefore, be regarded in any sense as the "main ridge" called for by the survey of the joint commission, irrespective of the fact already noticed that its average altitude is about 800 feet less than that of the Hangover, which does start at the river immediately opposite the main ridge on the northeast side of the river, and upon which the line on that side is confessedly located. From the top of the Fodder Stack the appellants claim that the state line runs south with the summit of that ridge to its junction with the Hangover ridge, which from there runs southwest. To support this contention appellants rely upon the fact that between the mouth of Slick Rock and the junction of Hangover and Fodder Stack ridges they show 41 trees marked as state-line trees, and from this circumstance they contend that this was the line actually marked by the commissioners, and adopted by them as the line, and that the calls for course and the "main ridge" must yield to the actually marked line. That the commissioners marked the line run by them is made clear by the existence of a marked line over those parts of the undisputed line on either side of the place in dispute. The North Carolina act of 1821, adopting and confirming the survey of the commission, concludes with the words, "the whole distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line tree." These words of description do not appear in the Tennessee act of 1821, and neither the original report of the commissioners nor the surveyors' field notes are in existence. The marked trees on this line are shown by blocking to have been probably made in 1821, and correspond in appearance to those existing in the undisputed line. They are strangely scattered along the line claimed. About one-half of the whole number are found within $1\frac{1}{2}$ miles of the mouth of the creek. Then for a distance of $3\frac{1}{2}$ miles not a marked tree is shown, though the line is still in the valley, where there was and is a great abundance of timber. Then, where the line is claimed to have left the creek, there are found a great number of marked trees within a short distance after starting up a spur leading to the Fodder Stack, but from the junction of this spur with the Fodder Stack to the Hangover only two or three trees are found. It is most difficult to account for this line of marked trees, irregularly as they are grouped. The probabilities are that they were marked by the commission. For what purpose? is the question.

Their evidential value as establishing the actual state line is
2006 greatly impaired by the following circumstances: (1) The
line thus marked is not upon the course which is called for by the survey as reported and adopted. (2) it departs from the line of the "main ridge," called for in the commissioners' survey, and a natural monument of the utmost significance. When a monument, natural or artificial, is called for, and its identity is doubtful, great importance may be properly attached to an actually marked

line upon the ground. But in this instance there was no reasonable doubt as to the identity of the "main ridge" called for in the commissioners' survey. The greater altitude of the Hangover ridge, as well as its general course, makes it most clear that there could have been no difficulty in determining that the Hangover, and not the Fodder Stack, was the "main ridge." It is, therefore, not a case of ambiguous calls, or doubt as to the identity of a natural monument in the description. The indisputable facts that the Hangover is much the greater in elevation, was in the direct course called for by the cession act, and was indicated by the chops on the established monument on the north side of the river, leave no reason for supposing that the commission mistook the Fodder Stack ridge as the "main ridge," and undertook to reach it by a line up the creek. (3) If we adopt the Slick Rock creek line, we must believe that the commissioners not only turned down the river at an acute angle from the course they had been following, followed the river for a half mile, and yet made no call in their report which would indicate such a departure, or that the river was made the boundary for any part of the line. (4) We must also believe that, instead of following a mountain boundary, which, according to the cession act, ran with the summits of the highest mountains, they deliberately abandoned the heights of the mountain ranges, and followed a water course from its mouth for seven miles, and yet made no mention of this natural object in their report whatever. (5) The significance of these trees as marking the state line is also affected by the fact that other trees similarly marked are found on the Fodder Stack ridge, which, confessedly, are not upon any line now claimed as the actually located state line. The surveyors who testify to such trees express the opinion that they were marked to designate Indian trails. As this whole region was the habitat of the Cherokee Indians at the time of this survey, in 1821, it is altogether possible that all of this marking was done by the Indians as mere trail marks, or in a spirit of imitation, though the stronger probability is that it was tentatively marked, and then aban-
2007 doned for the Hangover line, as the one indicated by the cession act, and the report made accordingly. (6) But the significance of the marked trees on the Slick Rock creek line is also weakened greatly by the fact that two, and possibly three, old marked state-line trees are found on the Hangover line. One of these trees is a black or red oak, and the other a sourwood. These trees stand on the summit of the Hangover ridge. The question as to whether they bore the proper marks for state-line trees marked in 1821 was much controverted. The master, after seeing and hearing most of the witnesses, and weighing the evidence, and seeing the blocks cut from the oak, reached the conclusion that the marks were state-line marks made in 1821, and so reported. In this conclusion the learned trial judge concurred. Giving to the finding of the master the weight properly attachable to it by the well-settled rule in that regard, we are unable to see any solid ground for rejecting his conclusion that these disputed trees are state-line trees and marked as such in 1821 by the state commission. Kim-

berly v. Armes, 129 U. S. 512, 9 Sup. Ct. 355, 32 L. Ed. 764; Medsker v. Bonebroke, 108 U. S. 66, 2 Sup. Ct. 351, 27 L. Ed. 654; Davis v. Schwartz, 155 U. S. 631, 15 Sup. Ct. 237, 39 L. Ed. 289; Singleton v. Felton (decided at this term by this court) 101 Fed. 526. We have, then, two lines run and marked. One is the better marked, possibly because it passed through more timber, and timber better adapted to carry the marks than the other, which followed a rocky, barren, mountain ridge, where the trees, as shown by the evidence, were scrubby and scarce. The other line, though more scantily marked, is found just where the course and natural monuments called for in the report of the survey would locate the line if neither had been marked. That the line ought to run on the extreme height of the Hangover ridge from the Tennessee river to the Unaka mountain, if the calls of the confirmatory boundary acts of both states are to control, is most evident.

The order of applying descriptions of boundaries is first to natural objects, course, and distances. In Brown v. Huger, 21 How. 306, 318, 16 L. Ed. 125, 129, the court said:

"In ascertaining the boundaries of surveys or patents the universal rule is this: that whenever natural or permanent objects are embraced in the calls of either, these have absolute control, and both course and distance must yield to their influences."

In Newson v. Pryor, 7 Wheat. 10, 5 L. Ed. 382, it was laid down as a rule that the most material and certain calls must control those that are less certain and material. The rule in Tennessee is 2008 not different. A call for a natural object will control unless it is shown that monuments of boundary were made at the time of the execution of the deed, and adopted as the boundary. Massengill v. Boyles, 4 Humph. 206. In Bishop's Lessee v. Arnold, Peck, 366, Haywood, J., said:

"When the consideration of questions of boundary first came before the courts in North Carolina, it was with difficulty the courts could bring themselves to depart from the calls of the grant, under the rule of evidence that parol proof should not be received to add to or detract from a written instrument, and the law to this day is, if the grant is intelligible on its face, it must not be departed from; but, many mistakes having intervened in making surveys, plats, and certificates, and filling the calls in grants, it was at length permitted to show the mistake by proofs."

The description of the boundary as run and marked by the commissioners' calls for a course from one natural object, the Tennessee river, to another, the Unaka Mountain. In the absence of any further description, the line should be run straight from one monument to the other. 3 Washb. Real Prop. side p. 632; Burnett v. Jones, 51 N. C. 210; Jenks v. Morgan, 6 Gray, 448; Caraway v. Chancey, 51 N. C. 364. The first call in the boundary act of both states is "from the Tennessee river to the main ridge." There are no words of intermediate description. The line should, therefore, be a straight one from the last monument on the river, the fore and aft pine tree, to the "main ridge." There being no possible doubt as to the identity of the "main ridge" referred to, there can be no

doubt on the face of the description following that the line should then run "along the extreme height of the same" to the next natural monument, to wit, "to the place where it is called the 'Unicoy' or 'Unaka' Mountain." Finding, as we do, upon the line thus located by identified natural objects, two old state-line marked trees, marked, as shown by blocking and examining the annular growth, in 1821, we have no difficulty in agreeing that the line, as run and marked by the commissioners in 1821 was the Hangover line, as found by the special master, and as claimed by the appellees. The probabilities are that the surveyors tentatively or experimentally marked the line up Slick Rock creek. Discovering that thereby they made a radical departure from the "extreme height" of the mountain chain called for by the cession act of 1789, they abandoned the creek, and ran, adopted, and reported the line as running along the extreme height of the "main ridge," now known as "Hang-
2009 over Ridge." This is the only reasonable explanation consistent with the absence of descriptive words calling for a line running down the Tennessee river, and then up Slick Rock creek. But it is insisted that the Slick Rock creek line has been long recognized as the line by both North Carolina and Tennessee, and by reputation and adoption has come to be the actual line, though not originally so run and marked. In the case of Virginia v. Tennessee, 148 U. S. 503, 522, 13 Sup. Ct. 728, 37 L. Ed. 537, where the question was a disputed boundary between Virginia and Tennessee, the court said:

"Independently of any effect due to the compact as such, a boundary line between the states and provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the course given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

But the court was there considering the effect of acquiescence upon a line run and marked by the commission of each state, which had been long recognized by both states as the true line, though, in fact, as afterwards discovered, it departed from the line called for in the grant which ought to have been pursued. That is not this case. Upon the facts stated, the Hangover line was run, marked, and adopted by the commissioners as the line called for and described in the cession act. From 1821 down to 1836 there is nothing in this record tending to show that either state, nor any persons, were claiming or recognizing the experimental line on Slick Rock creek as the line. The tentative line on the creek seems to have been first treated as the state line as late as in the fall of 1836, when the Tennessee surveyor general stopped a survey of the Cherokee lands ceded to Tennessee in that year, and which included the disputed strip at Slick Rock creek. Evidence as to the reputation of the creek line of trees as marking the state line, and of other acts indicating a recognition of that line as the actual line, must be unavailing, unless it is persuasive enough to satisfy the legal mind that the state commissioners ran, marked, and adopted the Slick Rock

creek line as the true line, although it is a radical departure from the description in the cession act, and contradicted by the description they themselves reported of the line they had run and adopted; or such evidence must show such a long and continuous recognition by both states of the creek line as to operate as an estoppel to 2010 deny that it was the line run and marked and adopted in 1821. Let us look at the evidence which is to be strong enough to pull the line away from the location indicated by the natural and definite monuments described in the survey. The matters chiefly relied upon by appellants are these:

(1) In 1836 the Cherokee Indians ceded to the United States their lands lying in both North Carolina and Tennessee, and the United States ceded to Tennessee the lands so acquired within that state. The Tennessee legislature, October 18, 1836, passed an act constituting said lands a surveyor's district, to be known as the "Ocoee District," and directed the surveyor general of the state to survey said lands, and plat them off into ranges, townships, and sections. The surveyor general accordingly did survey and plat said lands, and the plat shows that he stopped his survey at Slick Rock creek, and made that the eastern boundary of the Ocoee district. This resulted in leaving unsurveyed a strip of the Cherokee lands lying between the creek and Hangover, some three miles wide and six miles long, and is the land now in dispute. Until 1854 there was no law under which the unplatted Ocoee lands could be granted. But in 1854 an act was passed providing for the entering and granting of lands in the Ocoee district, "whether the same appeared on the map of the district or not." Acts Tenn. 1854, c. 22. The defendants below, by authority of this act, entered the lands now in controversy in 1882, and carried them into a grant in 1892.

(2) A direct consequence of the omission of the surveyor general to survey and plat the land east of the creek was to give rise to the reputation of the creek as the state line, although it is not so shown by his plat, nor by any report made by him. The fractional sections in the Ocoee district bounded on the creek were granted by Tennessee as fractional sections, though none of the grants call for the creek as the state line. The subsequent deeds of the grantees do frequently refer to the creek as the state line, though none of these fractional sections appear to have been conveyed by deeds so describing the creek earlier than 1853.

(3) In 1837, North Carolina made provision for the sale of the lands acquired by her through the Cherokee cession, but no surveys or grants within the disputed lines were made by that state before 1853. Two entries of land appear to have been made under North Carolina entries in 1853, another in 1859, and in 1860 grant No. 2,784, for 14,800 acres, was issued to Gilbert and Peet, under an entry made in 1853 and surveyed in 1856, under which grant the appellants claim.

(4) To further support the claim that the creek has been recognized as the state line, the defendants sought to prove by 2011 one Jones certain declarations made to him by one Thos. Hensley, deceased, that he (Hensley) had been with the surveyor general's party a part of the time when the Ocoee district was

surveyed, and that Hensley said the survey was stopped at the creek because it was the state line. This was rejected. Hensley's connection with the party of the surveyors was not shown, and his declaration amounted to nothing more than the statement of his opinion on the subject. As the declaration of a deceased person touching the location of a disputed boundary, it was possibly competent, under the Tennessee decisions holding that the declarations of deceased persons as to the location of a boundary line of land, made previous to the litigation, are competent. Beard v. Talbot, Cooke, 142; Holland v. Overton, 4 Yerk. 486; McCloud v. Mynatt, 2 Cold. 163. In a suit involving land titles, the courts of the United States follow state decisions upon questions of evidence. Clement v. Packer, 125 U. S. 309, 8 Sup. Ct. 907, 31 L. Ed. 721; Ayers v. Watson, 137 U. S. 584, 596, 11 Sup. Ct. 201, 34 L. Ed. 803. There was admitted in evidence under the rule stated above, evidence as to the declarations of several deceased persons, some of whom claimed to have been with the state commission of 1821, as to their understanding of the location of the line on Slick Rock creek. There was conflicting evidence locating the line by reputation. There was little in all this of any moment. The line at the point ran through an uninhabited wilderness, almost inaccessible. The fact of a visible line of marked trees on Slick Rock creek, observed by a few adventurous hunters, would naturally start the tradition that the state line was on the creek. The same fact doubtless influenced the surveyor general, and his omission to plat the lands east of the creek would confirm the reputation of that line. Not more than a half dozen persons are shown to have ever lived within the disputed lines, and there is a conflict as to whether they regarded themselves as living in Tennessee or North Carolina until after 1882, when they, or the greater number, being mere squatters, began to hold under one or other the contending titles, and to locate the line to suit their landlords. None of them go back beyond the North Carolina grant under which appellants claim, which bears date in 1830. Since 1882, when appellees obtained *their* grant from Tennessee, most of these inhabitants, if not all, have attorned to appellees, and have since voted in Tennessee, and hold themselves out as citizens of the Seventeenth civil district of Monroe county, Tenn. No active exercise of jurisdiction over the disputed territory is shown by either state, aside from the issuances of entries or grants to any who chose to apply. As the greater part of their large grant is indisputably in North Carolina, the appellants have paid taxes on the whole in that state. The fact is that the locus in quo is so inaccessible, so worthless for agricultural purposes, and so uninhabited, as to make the active exertion of jurisdiction by either state of no consequence. The land is now supposed to be valuable for timber and mining purposes, hence the present suit.

2012

To sum up the case:

1. The calls of the cession act of 1789, if followed, would locate the line on the Hangover ridge.

2. The legislation of both states, providing for the survey and marking of the line, required the commissioners to locate the line described by the cession act.

3. The calls of the confirmatory acts of 1821 of both states, if
lowed, locate the line on Hangover.

4. The commissioners did run and mark a line on Hangover, a
two state-line trees are identified and established as state-line t
on that ridge.

5. The commissioners also ran and marked a line along Sl
Rock creek, which connects ultimately with the Hangover line at
junction of the Fodder Stack with Hangover.

6. Between 1821 and 1836 the disputed strip between these li
was a part of the land occupied by the Cherokee Indians, who in t
year ceded their land to the United States; the Cherokee lands on
North Carolina side being subsequently ceded to North Carolina, a
those within Tennessee to the latter state.

7. Between 1836 and 1853 the disputed region was an uninhabi
wilderness, and neither state actively asserted any jurisdiction.

8. In 1836, Tennessee caused the Cherokee lands ceded to her
be laid off into a land district called the "Ocoee District." The s
veyor general omit-ed to plat or survey the lands between the mark
line on Slick Rock creek and Hangover, and bounded his survey
Slick Rock creek.

9. Between 1853 and 1882 grantees under Tennessee, in conv
ing fractional sections within the Ocoee district, described Slick Ro
creek as the state line.

10. After the Ocoee survey, in 1836, and down to 1882, the mark
line on Slick Rock creek was reputed to be the state line.

11. Between 1853 and 1860 North Carolina entries and gra
were made between the two lines.

12. In 1854, Tennessee, by law, provided for the entering a
granting of lands in the Ocoee district, whether platted a
2013 surveyed or not, though the act did not assert that there w
such unsurveyed lands.

13. In 1882 the entries under which the complainants claim, o
part of them, were made within the disputed lines, and in 1892
complainant's grantors obtained a grant.

14. After 1882 there was a divided opinion and reputation as
the location of the state line, and since that time the few inhabita
have voted and paid taxes in Tennessee, though the appellants ha
paid taxes on their grant in North Carolina.

15. The region remains almost uninhabited and inaccessib
Neither state is shown to have exercised jurisdiction over it save
issuing entries and grants as stated.

16. The true line, as actually located in 1821, was the Hango
line.

17. There has been, on the evidence in this record, no such lo
and continued recognition or acquiescence in the tentative line
Slick Rock creek as to justify this court in saying that it has be
adopted as the actual line so long as to stand for a definition of
true and ancient boundary. The conclusions and findings of
master upon the principal points in the case are not shown to ha
been so plainly erroneous as to justify us in overturning his conc
sions as to the existence of the marked state-line trees on the Ha

over, nor as to the fact that the Hangover was palpably the "main ridge" called for in the commissioners' report and survey.

The case, on the whole, is one not free from doubts engendered by the existence of the marked line on Slick Rock creek and its apparent recognition by the Tennessee surveyor general as the state line. The result reached by the special master, and confirmed by a most careful and conscientious trial judge, is a result which on the whole is most consonant with the calls in the cession act and the subsequent confirmatory boundary acts. The evidence relied upon to deflect the boundary from the line so plainly described by both acts settling the boundary is not so conclusive as to require us to reverse the action of the circuit court. The decree will therefore be affirmed.

2014 In the Supreme Court of the United States.

THE STATE OF NORTH CAROLINA, Complainant,
against
THE STATE OF TENNESSEE, Defendant.

Pursuant to the hour of adjournment on the 5th day of January, 1911, by agreement of parties the taking of depositions in the above entitled cause on behalf of the State of Tennessee was resumed before the Clerk of the Supreme Court of the State of Tennessee at the chambers of the Supreme Court in the City of Knoxville, Tennessee, on this the 6th day of January, 1911.

There appearing for the State of North Carolina: C. B. Matthews, Esq.; Ben Posey, Esq. (Mr. W. R. Hopkins).

And for the State of Tennessee: Charles T. Cates, Jr., Attorney-General of Tennessee; T. E. H. McCroskey, Esq.

2015 SATURDAY, *January* 6, 1911.

JOHN L. WILLIAMS, the next witness for the defendant, State of Tennessee, being first duly sworn, deposed and said:

Direct examination by Gen. CATES on behalf of the defendant, State of Tennessee:

Q. 1. Your name is John L. Williams?

A. Yes sir.

Q. 2. How old are you and where do you live and what is your occupation?

A. I am 34 years old; live near Benton, Polk County, Tennessee; my occupation is surveying.

Q. 3. How long have you been engaged in the work of following the avocation of a surveyor?

A. About 14 years.

Q. 4. Whereabouts has your work been done Mr. Williams?

A. The greater portion of my work has been in Polk County. I have done considerable work in Monroe County and in Union County and some in Knox County and in several of the North Georgia counties.

Q. 5. In what Land District of Tennessee is Polk County?

A. Nearly all of it is in the Ocoee Land District, a small portion of it in the Hiawassee District.

Q. 6. Which portion is in the Hiawassee District?

A. That lying north of the Hiawassee River in the vicinity of Wetmore on the L. & N. Railroad.

Q. 7. Wetmore?

A. Yes.

Q. 8. Then practically three fourths of the county or more is in the Ocoee District?

A. Something near nine-tenths of it is in the Ocoee District.

Q. 9. What experience have you had in running out tracts
2015 of land or the Township lines in these Districts and the basis line between them?

A. Nearly all my experience has been in re-surveying old lines of the Ocoee District and tracts of land not sectionized and the lot lines in Georgia. I have surveyed several miles of the Tennessee and Georgia State Line, and I am familiar with several miles of the Southern part of the boundary line between the Ocoee and Hiawassee Districts. Have surveyed over 8 or 10 miles of it.

Q. 10. What attention have you given, if any, in your business as a surveyor to examining and noting marks on trees and deciphering their significance?

A. Well I have had experience of that kind almost every month since before I began surveying.

Q. 11. Well, I will ask you to state whether in your business of a surveyor whether you have given any particular attention to that matter?

A. I have.

Q. 12. Have you held any official position in connection with your avocation—have you ever been County Surveyor of Polk County, Tennessee?

A. I was County Surveyor of Polk County, Tenn. from October 1898 to January 1907, a little more than 8 years.

Q. 13. I will ask you to state Mr. Williams whether you have ever examined or run that part of the State Line between North Carolina and Tennessee on the Eastern border of Polk County between Hiawassee River and the Georgia line?

A. Yes, I have surveyed and examined some two and a half or three miles along the Hiawassee River and South of the Hiawassee River.

Q. 14. You never run the line through to the Georgia line from the Hiawassee River?

A. No.

Q. 15. Is there any difficulty about the location of the line where it crosses the Hiawassee River?

A. There is not now to my knowing, but has been I know from tradition and history of the country in the past.

2017 Q. 16. The cession acts of the two States and the report of the commissioners calls for crossing the Hiawassee River at

the mouth of Cane Creek. The commissioners' map, I believe, calls it "Caney Creek." Is that where you run the line across the river?

A. Yes, that is I run the line across just below the mouth of the stream marked "Caney Creek."

Q. 17. I am referring, Mr. Williams, to this call in the commissioners' report "from thence (from the Unaka Turnpike Road) a due course South, two miles and two hundred and fifty-two poles, to a spruce pine on the North bank of Highwassee River, below the mouth of Cane Creek." Now have you run that line?

A. I have from about a half mile or three quarters of a mile North of the river.

Q. 18. From an undisputed point?

A. Yes, I think so, there was a mark there.

Q. 19. Then the next call is: "thence up the said river the same course about one mile, and crossing the same to a maple marked W. D. and R. A. on the South bank of the river." Have you run that call?

A. I have been over it.

Q. 20. That maple still standing there?

A. Yes.

Q. 21. With those letters on it?

A. I don't remember just how much of it was distinct the first time I was there some five may be six years ago. I was at the maple some four or five months ago and I could see the "W. D." and some marks below it, but at that time I couldn't have determined what it was if I hadn't already known.

Q. 22. You mean you couldn't have determined at that time the letters "W. D.," unless you had previously seen them?

A. I could the "W. D.," but not the "R. A."

Q. 23. Now I will ask you Mr. Williams to state whether you were connected in any way with the parties that were litigating
2018 over this land in the Slick Rock country or around the headwaters of Tellico River, either in the suit of Hebard v. Belding, or in the suit of Stevenson v. Fain?

A. No.

Q. 24. You made no surveys or examinations of that country for the persons interested in the result of the litigation in those cases?

A. No.

Q. 25. I will ask you to state, Mr. Williams, if you ever made an examination on the ground for the location of the line between the States of North Carolina and Tennessee from the Little Tennessee River, or points North thereof, Southward and Southwesterly along its course to the Unaka Mountain or the Unaka Turnpike Road and, if so, at whose instance, and when did you make that examination?

A. In December 1909 I made an examination of the State Line from about the 59th mile tree North of the Little Tennessee River to Jenks Knob at the instance of the State of Tennessee, or the Attorney General of the State of Tennessee.

Q. 26. What were your instructions in relation to that examination?

A. I had no instructions whatever.

Q. 27. Further than to go and find the line, or make an examination for the line?

A. Yes.

Q. 28. I will ask you to state whether before that time or preparatory for that examination you had looked into the Cession Act calls for the boundary line or the Acts of Tennessee or North Carolina or the report of the commissioners of 1821?

A. I had been familiar for many years with the Cession Act and with the report of the commissioners as adopted by the State of Tennessee and printed in the Code of Tennessee.

Q. 29. When did you first see a report of the commissioners of 1821 as it seems is claimed to have been found by Mr. Quarles in the basement of the capitol at Nashville—before or after you went on the ground?

A. As I remember, the first time I ever saw the copy of the
2019 report as found and the plat was about the first of November, 1909.

Q. 30. You mean a copy of the plat that has been produced here by Mr. Quarles as the map of 1821?

A. Yes.

Q. 31. That was before you went on the ground?

A. Yes sir.

Q. 32. So you had all those Acts and documents to which reference has been made before you, or had looked into them before you went on the ground to make the examination at the instance of the State of Tennessee?

A. Yes.

Q. 33. Now Mr. Williams tell us about the character of the examination made by you and whether you made a personal examination for the purpose of forming an independent judgment of your own in relation to the true location of that boundary line?

A. My first purpose and my first object on going there North of the Little Tennessee River was to see if I could fit the map to anything, and to also find the marks. We had instruments with us, used a compass. I took a great many bearings and observations, looking at the topography of the country and taking known points on the line and sighting both directions from that, and I asked the other members of the party that knew more about the line than I did not to be telling me anything about it, that I wanted to study out the proposition myself and not to be giving me information, unless I asked for it and they didn't, so that I think I made an independent observation of the matter.

Q. 34. Now you have referred to other members of the party. Perhaps, I should have asked you as to who were with you on that trip. Now state who they were?

A. W. D. Hale and O. W. Muller.

Q. 35. How long were you and Hale on that line at that time, and when was it?

A. We began work on the 7th day of December 1909 and finished

our work on the 18th day of December being practically two weeks.

2020 Q. 36. Have you been back over any parts of the line since then?

A. I was on the line again on and North of the Tennessee River on the 6th, 7th and 8th of September, 1910.

Q. 37. Did you make survey of any part of the line yourself, Mr. Williams? If so, what part of it?

A. Yes, I run the instrument from Laurel Top around by McDaniel Bald on the divide of the waters to Jenks Knob and also run the State Ridge from County Corners to Jenks Knob.

Q. 38. Does the State Ridge run from County Corners to Jenks Knob?

A. No, there was no continuous ridge.

Q. 39. You mean you run that line from County Corners to Jenks Knob by way of State Ridge crossing the waters of Tellico River and thence up the Jenks Ridge up—and thence up to Jenks Knob. That is what you mean?

A. Yes.

Q. 40. Did you run any of the line North of the Tennessee River yourself?

A. No. Mr. Hale's son was along and was the instrument man, and I stayed with him all the time and while he set the instrument and took the bearings I also read the bearings from the instrument every time.

Q. 41. Did you take them off the instrument yourself and make a note of them?

A. Yes.

Q. 42. How much of that line North of the river have you so run and noted?

A. About five miles and a half.

Q. 43. From what point to what point?

A. We began a short distance North of the 59th mile tree, probably 300 feet at the end of a Township line and carried the line to the North bank of the Tennessee River.

Q. 44. Now was that in December, 1909.

A. Yes.

Q. 45. What is that distance according to that survey made by you?

A. I would have to calculate that.

Q. 46. You say you would have to calculate it?

A. Yes. I have the distance, calculated from the 59th

2021 mile tree to the bank of the river.

Q. 47. What is that?

A. 5-51/100 miles.

Q. 48. How many poles in 51/100 miles?

A. 163-2/10.

Q. 49. How many feet?

A. 2692-8/10 feet. Now I don't say that is the exact distance in feet because I calculated that to the nearest hundre-th.

Q. 50. What notable objects did you find over there on the North side of the river on the line between the States?

A. The most notable objects that I now remember were the Turnpike Road, the Dalton Gap, Locust Gap, and a place which has been designated the Lone Pine at a sharp turn in the ridge North of the river.

Q. 51. What about Parsons Bald—is it over there?

A. That is North of the point we began the survey, but it is a very notable point.

Q. 52. Were you there?

A. Yes, also on Gregory Bald in September, 1910.

Q. 53. Where is Gregory Bald?

A. It is something like a mile Northeast of the Parsons Bald.

Q. 54. Where is the Parsons Bald with reference to the 59th mile tree?

A. Something like a mile and a half East, probably a little more than a mile.

Q. 55. Now on that examination and survey you had with you a copy of the map of 1821?

A. Yes.

Q. 56. Had you at that time ever seen the original map, Mr Williams?

A. No, I had not.

Q. 57. I mean the one that has been produced here by Mr. Quarles?

A. No, I had not seen it.

Q. 58. Now Mr. Williams, please state in your own way the result of your examination of that country for the location of
2022 the line and where, in your opinion, is the true location of that boundary line between the States, and give your reason therefor—I refer to the line not only North of the river, but between the Tennessee River and the Unaka Turnpike or the Jenks Knob—that being the Southern point of your examination?

A. Beginning at the 59th mile tree I noticed that it was not very far to Parsons Bald and that it was on the main ridge. I noticed that at different times also in going down the State Line. Part of the time the first day the fog was down, couldn't see very well, but on reaching the sharp turn in the ridge shown on Exhibit 1 to the deposition of W. D. Hale I noticed that that would be the lowest point North of the river from which we could see beyond to the Northeast and to the Southwest. I set up the instrument there and sighted back to Parsons Bald. Without moving the instrument I sighted to the Southwest then and in line with that back sight and noticed that it would fall to the right of the line—that is the line of sight would fall to the right of the line as shown on the copy of the 1821 map. From the same point I took the bearings back to Parsons Bald, to the Fodder Stack, to the Hangover, and I think to Rock Stack—took a number of bearings there, and I noticed that instead of being in line with that back sight back to Parsons Bald, the Fodder Stack was to the right of that line of sight; looking to the Southwest that Hangover was to the left. I then examined the

map and found that the map showed there was a turn to the left.

Q. 59. Whereabouts?

A. At about the river. I would use a straight edge on the map and I would stretch strings on the map trying it. I think I had a protractor along with me at the time, but by taking the mile circle at the 58th mile, which is very close to Parsons Bald if not on the bald itself, and stretching a string across to the Tennessee River and past it I determined that the general direction of the line after crossing the Tennessee River was to the left. The line of sight as prolonged from the 58th mile tree by the point mentioned North of the Tennessee River, as I have stated, was to the left of Fodder Stack and to the right of Hangover. That was the first impression
2023 that I got that the line would more nearly fit the Hangover, than the Fodder Stack Ridge. I had been looking at both ridges all the way down the mountain on the North side, especially from the Turnpike, I was already of course familiar with the map, but I kept looking at it, and from that point North of the river, as near as I could, I looked at the direction and location of the Cheoah River and of Slick Rock Creek, and looked very particularly at the ridges and I noticed that the map showed following the top of the ridge or a mountain from the second mile South of the river, and from the examination of the map and from looking at the ridges and the streams and the direction of the lines, I decided that the line must go over the Hangover Ridge, because I saw the line could not fit any other ridge with any reasonable degree of accuracy; and while the mouth of Slick Rock Creek appeared to be closer than the mouth of Cheoah, I was under the impression standing there on the North side of the river and not having had any information about the mouth of Cheoah and about the direction of Cheoah, that the Hangover Ridge very nearly paralleled Cheoah for a considerable distance back from the river.

Q. 60. How did you find it when you went there on the South bank of the river and ascended Hangover Ridge?

Gen. CATES: Since Mr. Hopkins objects, the State of Tennessee asks that the question remain on the record and withdraws it for the present and requests the witness to proceed.

The WITNESS (continuing): At that place I asked Mr. Hale to point out to me the points claimed by North Carolina on their line and the points claimed by Tennessee, and was told that one of the lines claimed—claimed by North Carolina—ran up the Slick Rock Creek for some five miles, and he pointed out to me the spur running down from Fodder Stack to that point on the creek. He also pointed out to me Little Slick Rock and several other notable objects on the South side of the river. I stayed on that point looking for quite a long while. The next day I crossed the Tennessee River and
2024 started over the Hangover Ridge. Went around to the Junction and went down the Fodder Stack Ridge as far as Glen Gap. I had previously been on the Big Fodder Stack and on Little Fodder Stack going over them from Citico Creek in 1906. I kept up my observations while going over the ridge leading to Hangover

and down the ridge leading to Fodder Stack and kept studying the map, and I could not see why if the commissioners had gone up Slick Rock Creek for a distance of five miles they would show only a mile or a mile and a half of the creek, and having shown tributaries to Slick Rock Creek would omit Little Slick Rock near by; that would show they were on top of a mountain all the way from the second mile South of the river, from all of which I concluded that the line must go over Hangover Ridge. The only point that I have seen to the contrary is the short abrupt turn in the line some six or seven miles south of the river.

Q. 61. Well, what about that abrupt turn, Mr. Williams?

A. Well, I don't know. I have studied a good deal about that; it could have occurred from a mistake in lines of that length, and in such country and under such circumstances mistakes are often made.

Q. 62. Do surveyors ever make any mistakes in noting down a call from the compass?

Mr. MATHIS: We object to that as not being ground for expert knowledge.

Q. 63. Well, state whether they do?

A. I have, and I find by following old descriptions that others have.

Q. 64. I will ask you to state whether, in your opinion Mr. Williams, this old map, the original one produced by Mr. Quarles being before you here, from the river South thereof will conform to a line up Slick Rock for five miles?

A. I don't think so from my observations on the ground.

Q. 65. I started to ask you sometime ago about how when you got over on Hangover Ridge you found the course of the Cheoah. Tell us now whether the actual observation from a point on the
2025 Hangover Ridge confirmed or not the impression which you had and which you stated about the relative course of the ridge and Cheoah River from a point North of the Tennessee River?

A. I thought while on the North side of the river that in going up Hangover Ridge that I would be able to look off to the Cheoah. When I got up there I found I couldn't and would probably until yet be under the impression that I was near and was going parallel with the Cheoah if I had not been told to the contrary. The timber is very heavy up the Hangover Ridge, so that one could not see to the Eastward.

Q. 66. How about in the Summer time?

A. It would be more difficult to see from Hangover Ridge.

Q. 67. Why?

A. Because of the leaves on the trees.

Q. 68. You were there in a season when the leaves were off the trees and you had a better view of it?

A. Yes.

Q. 69. From Hangover Ridge could you see the point of Cheoah where it turned upward more sharply to the East or South?

A. No, I could not see.

Q. 70. Well, the commissioners' report calls from the Tennessee

River to the main ridge. Where, in your opinion, is that main ridge, Mr. Williams, and give your reasons for such opinion as you may have?

A. The Hangover Ridge is the only ridge that I could construe as the main ridge at all, and I thought that before I went there because I have been accustomed to seeing the Hangover Ridge for a good many years. I worked in the Tellassee vicinity back in 1903 and in traveling up and down the L. & N. Railroad, if it is a clear day and crossing the Little Tennessee River I almost always look out to Hangover and those mountains. I suppose I have looked at Hangover from the bridge of the L. & N. over the Little Tennessee River for the last three years or more, and I can see the Hangover and the Hao and Stratton Bald from that point on the river some 20 miles below, and except under more favorable circumstances can't see the Fodder Stack or the Fodder Stack Ridge at all—
2026 that is, the Hangover Ridge is standing out above the Fodder Stack so that the Fodder Stack is between or below the top of the Hangover, so that except under favorable circumstances I can't see the Fodder Stack at all. I have been on all sides of the Hangover, except on the East side, and it appears to be higher and it appears to be the main ridge from all directions and from all distances that I have seen it. It is very much the highest ridge and particularly so where the ridges separate. It is difficult to find where the Fodder Stack Ridge leaves the Hangover Ridge. The first time I was at that point I was with Mr. Hale, and I didn't know anything about where it was. I expect it would take me quite a while to hunt it. He said the only way we could be able to find it was to find the trail, and if he had not been along I would not have known that trail led to Fodder Stack Ridge.

Q. 71. You were then going on the main ridge from Stratton Meadows Northeasterly?

A. No, Southeasterly, along the Hangover Ridge.

Q. 72. By way of Stratton Bald?

A. Yes.

Q. 73. And when you reached that point that they call "Junction" you would not have known on that South side was the Fodder Stack lead?

A. I knew that the Fodder Stack proper came up in that vicinity and it would have taken me a great while to find it, and there was no index to find it on the top except that trail and I didn't know where that trail was.

Q. 74. How far would you have to ascend from the top of the lead to where you would find the Fodder Stack Ridge joining it?

A. I don't know that I could even approximate the distance, because in going over Stratton Bald we kept under the top of a mountain on a trail and below the laurel and down at the trail we couldn't tell and we went down the side of the Hangover Ridge some little distance before it was plain to me that we was on the ridge, but how far I couldn't say. I never measured the distances there any where.

2027 Q. 75. Now you have spoken of seeing Hangover Ridge and Hao, and that they loomed up over Fodder Stack Ridge and from places down on Tellassee and where the L. & N. Railroad crosses the Little Tennessee River. Both of those places are West of both Hangover and Fodder Stack, are they not?

A. Yes, I don't think I stated from Tellassee. I don't remember any point on Tellassee Creek from which I saw the Hangover. I was working in that vicinity both on the mountains and the country surrounding Tellassee Creek there.

Q. 76. How does it appear from the North side of the river coming down the State Line from Parsons Bald?

A. It appears to be much the highest ridge.

Q. 77. I will ask you to state whether it appears to be the main ridge from the North side of the river—whether a party of surveyors coming down on that North side would easily select it as the main ridge on the South side?

Mr. MATTHEWS: We object to that as incompetent and irrelevant.

A. I did.

Q. 78. What is your opinion about that from your experience and observation of mountain peaks and ranges and ridges as a surveyor?

A. I don't see why or how any one could consider it differently than I did as to being the main ridge.

Q. 79. Now I didn't ask you particularly about marks along the line North of the river, because that seems to be undisputed. Were you at that tree, the Hemlock, marked a fore and aft tree on the bank of the river that has been testified to a number of times in this case?

A. Yes, I saw that tree.

Q. 80. Now which is the nearest main ridge from that point?

A. The Hangover.

Q. 81. When did you become familiar with what is known as the State Line markings, that is, two hacks and a blaze on a fore and aft tree and three hacks on a side line tree?

2028 A. I don't now remember where I got my first information about it. The first marks I saw was in the vicinity of Hiawassee River in 1907 I think and the mark that I found there was three hacks. I am not sure that I knew what the fore and aft tree marks were there until I went North of the Tennessee River in 1909.

Q. 82. What lines did you find marked over there on the North side of the river, and how?

A. I don't remember finding any line mark except the State Line, and I found almost all kinds of marks on that and pretty nearly all ages back to the time of the original survey. I found marks 88 years old; I found marks 58 years old, and I found marks which I judged to be 30 years, and I have seen marks down to 14 to 16 years old.

Q. 83. On the same trees, or on different trees?

A. On different trees usually. I think I have seen two ages of marks on the same tree.

Q. 84. On the same line?

A. Yes.

Q. 85. Did you find two different marks over there on the different ridges on the North side bearing State Line marks, Mr. Williams?

A. Yes, I found the different ages of marks and I found one mark near the turnpike road on a chestnut tree, which I didn't think were old enough for the original marks. I have seen a number of old marks along the line which were very old, but which I don't think were old enough for the original marks. I took an ax and cut into that Chestnut near the Turnpike and just a little South of it and found the marks to be 58 years old. Over at Locust Gap, about one-half mile I guess Southwest of the Turnpike I found a Black Oak tree, which I thought certainly had the original marks in it and cut them out and found that they were the original marks.

Q. 86. Then it is a little bit difficult to tell the markings on a tree when they get to be 40 or 50 years old, is it not?

A. Especially after they pass 50 years old. I find lines sometimes
40 years old which I think are the original in the Ocoee Dis-
2029 trict, where the lines are now 73 or 74 years old and the only way I can tell the age of the marks with any degree of certainty without cutting them out is by following the line and finding a number of marked trees and if I find two many I know they are not the original marks.

Q. 87. Why?

A. Because the original marks are very scarce in the Ocoee District.

Q. 88. Would that apply to other Districts too?

A. Yes, I find it so in Georgia and the Georgia lots.

Q. 89. Now where was that tree that you remember bore marks that you thought were old enough to be State Line marks in 1821, which you blocked and discovered they were only 57 or 58 years old?

A. I didn't believe they were the original marks before cutting them out, but I did find marks that I thought were original marks but I came to the conclusion that there were entirely too many of them. I cut into that Chestnut because it showed the ax had went to the wood, and because I wanted to see what the age of the marks were in that tree, and I found that they were only 58 years old, and from that I decided that I was right about it that there were too many and they were not the original marks.

Q. 90. Were the original marks in form—two hacks and a blaze?

A. Those that I saw were.

Q. 91. But not original marks in age. That is what you mean to convey is it?

A. Yes.

Q. 92. Then what conclusion did you reach about whether or not that line North of the river had been run and marked more than once?

A. Well I felt sure that it had. In fact I knew it had been marked more than once before cutting into that tree, because some

of the marks were so new as to be clearly recent marks, but there being a good many very old marks I thought that there were too many of them—that there certainly would not be that many of the original marks, and cutting into that tree knowing that I could find the marks in it if the tree had not decayed on the inside.

2030 Q. 93. Now what about that Hemlock on the North bank of the river marked fore and aft?

A. I didn't count into that, that is, I didn't cut into that. I counted the growth of the tree where it had been already blocked enough to satisfy me that it had been the original marks.

Q. 94. Blocked there on one side?

A. Yes.

Q. 95. On which side?

A. The North side I believe from the river.

Q. 96. Now I will ask you to state Mr. Williams whether this line shown on the map of 1821 South of the river corresponds to either the Slick Rock Creek, to Big Fodder Stack, or a direct course from that Hemlock—North of the river, across the river, thence to Hangover, and if it doesn't conform to either, to which does it most nearly conform?

A. To take the shape and alignment of the line itself it don't conform to either I don't think. To take the shape of the line alone I think it more nearly conforms to the Slick Rock line, but for the shape of the line it conforms more nearly to the Hangover line, that it taking the topography shown on the map and every thing else, except the shape of the line, it conforms more nearly to the Hangover line.

Q. 97. Look at this etching just South of the river as shown on this map and on the West side of both the boundary line as laid down on the map and also of that stream marked "Creek." What does that etching or those hachures show?

A. That indicates to me that there was a ridge to the right of where they went up from the river or to the Southwest which would correspond to the actual conditions going right across the river from the Hemlock and up to the top of the Hangover Ridge, that is the Hangover Ridge goes right on down between the river and Slick Rock Creek to the mouth of Slick Rock Creek, and going directly across the river from the Hemlock and to the top of the Hangover Ridge the point of the main ridge is to the right or to the West of the line. So that that would very well represent the actual conditions if they had gone right across the river from the Hem-

2031 lock and up to the top of that ridge.

Q. 98. Then if they had done so—gone straight across the river from the Hemlock as indicated on Hale's map, Exhibit No. 1 to his deposition, that ridge that runs down from the Hangover Ridge to the junction between Slick Rock and the Little Tennessee River would have been to the right of the line and entirely represented by these hachures or this etching on the map of 1821?

A. Yes, taking Exhibit No. 1 to the testimony of W. D. Hale, which shows a number of spurs running off to the Tennessee River there, the main ridge as shown on his map goes down to the mouth

of Slick Rock Creek and the spur shown on that map having the dotted line along the spur is not the main Hangover Ridge.

Q. 99. Does Hale's map, Exhibit No. 1, show correctly the topography of the country at that place as you know it from being on the ground?

A. Well so far as I know it it does, but I don't know about some of those spurs. I know that we went across the river and took up the line from the North side from the Hemlock.

Q. 100. Go straight across?

A. We went up near the mouth of Cheoah to cross the river and crossed in an eddy below the mouth of Cheoah and then went up the—no then went down the South bank of the river to opposite the Hemlock and went up a steep rocky spur to the top of Hangover Ridge.

Q. 101. Well from that point to which you went could you see a spur down there running down to the forks of the river and Slick Rock Creek?

A. Yes, I had already seen that from different points on the North side of the river and could see from the North side of the river that it run down to Slick Rock Creek and that main spur run up from that South side.

Q. 102. What do the etching or hachures on this map of 1821 show as to the line at the end of the second mile circle South of the river?

A. Shows that they are on top of the mountain from there to the Southwest.

Q. 103. If the line be the Hangover Ridge as delineated
2032 on this map, Exhibit No. 1 to Hale's deposition, would it there conform to the etching as shown on this map of 1821—that is, be the top of a ridge?

A. Yes, it would be on top of the ridge.

Q. 104. Well now if it run up Slick Rock Creek for a distance of two miles, would it at such point be on top of a ridge as indicated on this map of 1821?

A. No, it couldn't be.

Q. 105. It couldn't be?

A. I didn't go up the Slick Rock Creek, but I have seen it and have seen the Slick Rock Creek basin from all sides.

Q. 106. It couldn't be the top of a main ridge at that point?

A. No.

Q. 107. I will ask you to state Mr. Williams from your judgment and experience as a surveyor, does this map of 1821 show any line South of the Tennessee River running five miles up a creek?

A. No.

Q. 108. Mr. Williams, does this map of 1821 show any line immediately South of the Tennessee River crossing back and forth across any stream, or what does it show?

A. It shows the line at the mouth of the stream or very near it and from there to the Southwest it shows that the line is all the way on the West side of the stream and is not near it any more, except at one point, which is shown as a mile circle, and at that point it is to the West of the stream. After passing that first mile circle it

doesn't show it touching the stream any more or as being very near it.

Q. 107. Then it doesn't cross back and forth over any stream?

A. It doesn't show it so.

Q. 108. Since "trend" seems to be a good word, I want to ask you what is the general trend of that line as marked on the map of 1821 immediately South of the river—whether it is directly with that stream marked a "Creek," or whether the general trend is away from the creek?

A. Its general trend is away from the creek.

Q. 109. Mr. Williams, how far is that line from this stream
2033 marked a "Creek," as shown on the map according to the scale of that map at the point where the stream going up it makes a rather sharp turn to the South?

A. About as near as I can scale and calculate it is 80 poles or one fourth of a mile.

Q. 110 In feet, how many?

A. That would be 1320 feet.

Q. 111. Now how far from the river is that bend to the Southward of this stream marked "Creek"?

A. It is a little less than a mile and a half as shown by the mile circles on the map.

Q. 112. So that within a mile and a half from the river on the South side the line as depicted on this map of 1821 is at least a quarter of a mile from the stream also depicted on that map as "creek"?

A. Yes.

Q. 113. Now Mr. Williams, according to the scale of this map of 1821 and as thereon shown, tell us how far this line as laid down on the map at a point five miles South of the river, would be from this stream marked "Creek" South of the river?

A. As near as I can scale and calculate the distance to the nearest point on the creek would be 2 miles and 140 poles, or 2-6/16 miles.

Q. 114. That is according to the scale of this map of 1821 and as laid down there it is 2-7/16 miles from a point on the State Line South of the river to the nearest point of that stream marked "Creek"?

A. Yes.

Q. 115. I believe that it is claimed by North Carolina that the boundary line leaves Slick Rock Creek and runs up on the Fodder Stack Lead some five miles South of the river. Is it?

A. That is my understanding from the testimony.

Q. 116. Now Mr. Williams going up Slick Rock Creek from its mouth, what is its first tributary on the right hand side?

A. I don't know.

Q. 117. You don't know whether it is Little Slick Rock or not?

A. I know that the first important tributary is Little Slick Rock.

2034 Q. 118. Look at this stream marked a "Creek" that runs into the river there East of the boundary line, and tell me how far it is from the mouth of that stream to the point where

tributary on the right hand side appears, according to the scale of that map?

A. I make it 4/10 miles to the first tributary shown on the right hand side of the stream marked "Creek".

Q. 119. Mr. Williams, judging from your experience as a surveyor and your observation of maps, modern and old, in connection with your work, please state whether there is any custom among surveyors and makers of maps as to marking a line along a stream on the map when a stream is intended to be the boundary itself?

A. Well, I have traversed a good many streams as a boundary line, but I don't remember that I saw them marked in any way any of them.

Q. 120. Perhaps, I didn't make myself sufficiently clear. If you had been running a line and intended to make Abrams Creek a part of that line, to illustrate: suppose you had been running up the Tennessee River to Abrams Creek and thence with Abrams Creek 5 miles to a given point, thence from the end of 5 miles to the head of a near ridge. In making a map of that survey, would you have simply laid down Abrams Creek, or run a line along up Abrams Creek zig zag back and forth and away from it?

A. I would carry a traverse line up the river to the creek and then up the creek and to the end of the distances and bearings and note the point of leaving the stream, the creek.

Q. 121. Well, it wouldn't be sufficient to put it down on a map just a stream, and wouldn't you put down the stream and the line called for if you intended to run up the stream?

A. Well if I intended the stream for the line I would show only the stream.

Q. 122. If you were going to do that and run up the stream 5 miles to a given point and thence with the ridge to another point, would you have noted that stream in your map and report?

A. Certainly.

Q. 123. I will ask you to state whether or not there is any 2035 custom of that sort among surveyors and map makers?

Mr. MATTHEWS: We object to that on the part of North Carolina, because it is not applied to the time this map was made and is therefore incompetent and irrelevant.

A. Yes, that is the custom.

Q. 124. How long had it been the custom, if you know?

A. Well I think it has been the custom as far back as I have seen any maps or reports to note distances of notable objects and to note streams of any size much. The maps of the Ocoee District both in Tennessee and Georgia do so, both of which were made about 1836 or 1837. The report and plat of the commissioners running the line between North Carolina and Tennessee in 1821 note some streams and several other notable objects along the line.

Q. 125. I will ask you to state Mr. Williams if the report of the commissioners in 1821 doesn't call for a stream at every place it crosses a stream at an undisputed point?

Mr. MATTHEWS: I object to that because the undisputed points are shown in the evidence, and the report shows for itself.

Q. 126. I will put it this way: The report of the commissioners calls for running South from Unaka Turnpike to a point below the mouth of Caney Creek—Cane Creek—on the bank of the Hiawassee River. There is a stream there isn't there, and it is known as Caney Creek or Cane Creek?

A. Yes, it is a stream there and the stream is known on the maps as Cane Creek, but by the people living in that part of the country it is generally known as Shulers Creek. All of the maps I have ever seen shows it as "Cane Creek".

Q. 127. That is an undisputed point, is it not?

A. Yes.

Q. 128. Now before leaving this stream called a "Creek" I will ask you to point out according to the scale of this map of 1821 how far is the nearest point of that stream from that point in the State Line some six or seven miles South of the river where it makes a sharp bend to the Southeast?

2036 A. By scale it is 3 7/10 miles.

Q. 129. Now if that point at which the State Line as shown on this map of 1821 where it makes a sharp bend to the Southeast should be Fodder Stack as claimed by the State of North Carolina, how far according to Burns' map, exhibited with his deposition in this case, is Fodder Stack from the Slick Rock Creek as it actually runs on the ground?

A. Be a little more than a mile and 3/10, would be a mile and 1670 feet as near as I can scale it.

Q. 130. I believe this last measurement of yours is given from Fodder Stack Ridge to the nearest point on Slick Rock Creek?

A. Yes.

Q. 131. Now please ascertain from Mr. Burns' map, complainant's Exhibit "D", how far it is from Hao to the nearest point on Cheoah River?

A. It is approximately 4 5/10 miles.

Q. 132. Now Mr. Williams, tell us whether it is possible for a surveyor or a corps of surveyors to go from Fodder Stack to the point where the Fodder Stack Ridge shows itself—I mean joins itself to the main mountain, and not see that you are passing around the headwaters of Slick Rock Creek?

A. I think it would be impossible to go up the Fodder Stack Ridge from the Fodder Stack to the junction of the ridges without knowing that you had gone around the head of Slick Rock Creek, unless the fog had been down until they couldn't see the surroundings at all and in that case I don't see very well how they could follow the ridge, but I don't consider it possible at all to go over the line as laid down North of the Tennessee River and along Slick Rock Creek and over the Fodder Stack Ridge without knowing it, because that is a distance of some 15 miles over which I don t think a survey could be made when it would be too foggy all the time

to see the Hangover Ridge and Fodder Stack Ridge and to know that the Slick Rock basin was surrounded by the two ridges.

Q. 135. Would it in your opinion Mr. Williams be possible for a surveyor or a corps of surveyors to run a line up Slick
2037 Rock Creek 5 miles, thence up the Fodder Stack Lead to the Fodder Stack Ridge, thence along the Fodder Stack Ridge to its junction with the main ridge and not see and know that the headwaters of Slick Rock Creek on the East and South were enclosed and surrounded by the Hangover, Hao and Stratton Bald Ridge much higher than the Fodder Stack Ridge?

A. I don't think they could possibly carry on a survey at a time when they couldn't see that.

Q. 134. Well now Mr. Williams if we assume that the surveying party in 1821 did go up the Slick Rock Creek to the Fodder Stack Lead and then up that lead to Fodder Stack and thence on to the Junction and then intended that stream marked "Creek" to represent Slick Rock Creek as it is laid down on that map, what would it indicate as to the character of the work done by those surveyors?

A. Well granted that they did go up Slick Rock Creek for 5 miles and over the Fodder Stack Ridge and show Slick Rock Creek as they have on the map and without the tributaries shown we know about and without showing anything on that map for Hangover Ridge when they had sketched in so many other ridges along that line adjacent to the State Line, it would indicate to me that they were grossly careless and incompetent.

Q. 135. I will ask you to state Mr. Williams whether you think it possible that the surveyors made any notes of a- actual survey and then drew a map from such notes a of an actual survey and run a line away from a stream at the distance of a mile up it when they actually run up the stream 5 miles.

A. No, of course I don't think they made such notes, neither do I think they could get the distance run so far as to show one mile for five.

Q. 136. Mr. Williams, I will ask you to state whether, in your opinion, that they didn't make a note of leaving a creek or reaching the top of the mountain whether they were taking enough data from which to make an accurate map of their survey?

A. No.

Q. 137. Did I understand you to say you had been up Slick Rock Creek?

2038 A. I have not.

Q. 138. Have you looked down it so that you can tell the character of the country down there along the creek?

A. Only in a general way. I have been entirely around the creek on all sides from Little Fodder Stack around the dividing ridges of the creek all the way back to the river and have looked off into the basin from all sides so that I have a general idea of the character of the country.

Q. 139. Look at this map of Mr. Burns, complainant's Exhibit "D." and tell us the general direction of Hao and Hangover from the nearest point of the Slick Rock Creek or its tributaries?

A. They are about East from the head of the creek.

Q. 140. You mean East of the head of Slick Rock Creek?

A. Yes.

Q. 141. Well look again at this map of Mr. Burns and tell me about how far East of the head of Slick Rock Creek are Hangover and Hao as they stand on the ground?

A. Well about 4,000 feet from the main head of the creek or three-quarters of a mile, but one main head of the creek is shown as heading just under Hao.

Q. 142. That is the main left hand prong going up the creek at the head of the creek?

A. Yes.

Q. 143. Mr. Williams, I here show you Exhibit "A" to the deposition of Onley Williams, which is a copy of this map of 1821, and assuming that this stream flowing into the river on its South side East of the State Line and marked on the map a "Creek" is Slick Rock Creek and that Hangover and Hao are to the East of the headwaters of that creek as it is shown on the map, mark the place or places where Hangover and Hao should approximately appear on this map Exhibit "A"—just mark them in red ink and refer to this question and answer for explanation.

A. I have marked them "H. H." in red ink and directed their explanation to be found in this question and answer.

2039 Q. 144. Mr. Williams, if the stream on the map marked "Creek" just South of the river be assumed to be Slick Rock, what would you say of the surveying and the map made therefrom which would wholly ignore the existence of Cheoah River flowing into the Little Tennessee River a short distance above?

A. It would seem to me to be very careless surveying not to note the Cheoah River which was so near the line and show so many things so far away from the line.

Q. 145. What are the relative sizes of Cheoah River and Slick Rock Creek?

A. Well, I couldn't very well state the relative sizes, but Cheoah River is many times larger than Slick Rock Creek.

Q. 146. State whether the angle which this stream marked a "Creek" on the map of 1821 reaches the river more nearly fits in with Cheoah River or Slick Rock Creek, in your opinion?

A. The angle, the difference in direction of the Tennessee River with the stream marked "Creek" more nearly represents Cheoah River than Slick Rock Creek.

Q. 147. I will ask you to tell us about the relative heights of Hangover and Hao and Stratton Bald Ridge and Fodder Stack Ridge. I will put it differently—tell us whether you took the elevations?

A. I took the elevations along the State Line from the 59th Mile Tree to the river and from the Tennessee River over the Hangover Ridge on by the Junction around the head of Tellico River to the Jenks Knob and also of the State Ridge and Jenks Ridge and took some of the elevations of Fodder Stack Ridge down the ridge as far as Glen Gap. These elevations were taken continuously, con-

secutively and compared, and at another time I took the elevation of the Big Fodder Stack, but I didn't compare that with other readings taken, that is, I didn't read it at a second time.

Q. 148. Are those the elevations laid down on this map Exhibit No. 1 to Hale's deposition?

A. They are, in red ink.

Q. 149. Now if you have got the elevation that you took of Fodder Stack, I will ask you to put it on that map, if you have it here?

2040 A. I haven't the elevation with me. I know about what it was, but I don't know how it would compare with the other readings, except that I know that my readings was about right in going off from Fodder Stack to the Tennessee River, and as I remember, that reading it was about 4,200, somewhere between 4,100 and 4,200 is my recollection.

Q. 150. Is Beech Basin shown either on Burns' or Hale's map?

A. No, I think not.

Q. 151. About where is Beech Basin?

A. It is to the North of and near Hangover.

Q. 152. How far from Hangover?

A. I never measured the distance.

Q. 153. I will ask you to state Mr. Williams, whether there is a point on the Hangover Ridge or mountain from what is called the Junction Northeasterly over the Stratton Bald, the Hao and the Hangover Rock to Beech Basin, a distance of some 4 miles that is not higher than any point on the Fodder Stack Ridge or Lead?

A. Leaving the Junction and in going over Stratton Bald and the Hao and Hangover to Beech Basin or a point near it there is not any point of that ridge but what is higher than the highest point of the Fodder Stack Ridge?

Q. 154. And how much nearer is that Easterly point of the line just described Northeast of Fodder Stack to the Tennessee River than the Fodder Stack Ridge or Lead?

A. I don't understand the question.

Q. 155. You have said that there isn't a point on this line from Junction Northeasterly to Beech Basin that is not higher than the Fodder Stack Ridge. Now I ask you how much nearer to the Tennessee River *to* the Eastern end of that line which you have described from Junction to Beech Basin than the Fodder Stack Ridge?

A. Personally I don't know how much nearer it is, but I know that it is nearer. The maps exhibited, especially Exhibit 1 to the deposition of W. D. Hale, shows it to be a mile nearer scaling it straight.

Q. 156. Straight line regardless of actual distance run?

A. Yes.

2041 Q. 157. Now Mr. Williams, examine this original map of 1821 as produced here by Mr. Quarles, and tell us whether the north point given on that map corresponds in direction with the due South line at the South end of the map and if it does not

what variation is there between the North point and said due South line?

A. They do not correspond in direction and lack from 7 to 8 degrees corresponding.

Q. 158. Does that make any difference whether that North point is intended to represent the true North or not?

A. No, in scaling angles from the map it doesn't make any difference, I think, whether it is put on wrong or whether it was intended to represent the true North, because the line was surveyed by magnetic bearings as shown by the due South line itself, which was a magnetic bearing as shown by its present bearing *bearing.*

Q. 159. Give us a simple illustration, if you can, to show how you can tell why this due South line doesn't correspond with the North point as indicated on the map?

A. To take the original map itself no illustration is necessary for me, because I found on close examination that there is a system of parallel lines on the original plat and perpendicular lines also. One of which exactly coincides with the due South line from the Turnpike to Georgia.

Q. 160. And how is that line indicated?

A. By a very feint pencil lines following those lines—by a number of feint pencil lines following those lines I found that there is one through the North point which does not correspond to the North point. Taking any copy of the map with an assistant may hold the copy of the map against a wall and shove the map until the due South line is perpendicular, may be tested with any plumb line and string—a string and a plumb, and when the plumb line is made to coincide with the map showed the map to the North point wouldn't coincide, but it showed that the map coincided with the South line. That is a good illustration, it may be proven without any instruments whatever.

Q. 161. Then if that line from the Unaka Turnpike to
2042 the Georgia Line is the true South line that North point on the map is between 7 and 8 degrees off?

A. As near as I can make it is 7½ degrees off the North and South line as shown at the South end. What the true bearing was at that time I don't know, but the North point may be intended to represent the true North Point at that time.

Q. 162. Suppose that the North point was intended to represent the true North at that time, what does the due South line represent?

A. To represent the due South magnetic bearing.

Q. 163. Then there would be a considerable difference between the two?

A. And inasmuch as the due South line called for is shown and platted as magnetic North and South it would necessarily follow that all bearings were platted by the same magnetic meridian.

Q. 164. I will ask you Mr. Williams if any one can scale bearings on that map from the North point as shown on it with any degree of accuracy?

A. No.

Q. 165. Why?

A. Because of the fact that it is either put on wrong or put on to represent true North when the line was platted on a magnetic meridian.

Q. 166. What is the difference between a true meridian and magnetic meridian?

A. It is a variable quantity. It varies at the same place and is never the same at different places—that is if there is a line running through the United States where there is no variation where the magnetic meridian and the true meridian is the same that is the needle itself points due north and South, and places to the East of it will have one variation and while places further to the East will have more variation and same to the West. In other words the variation here is not what it is at Memphis and it is not what it is at Washington except for points on that particular line there would be no places with the same variation provided they were to the East or West of each other.

Q. 167. Mr. Williams, state whether in your opinion you could take the courses as shown on that map of 1821 and make
2043 therefrom and to comply therewith an actual survey of the main ridge of the mountain called for as the State Line and the Great Iron mountains on through to the Unaka Turnpike.

A. No, I don't think so, I never thought at the time to try it.

Q. 168. State whether that was a careful conclusion you reached after a careful study of the map?

A. Yes.

Q. 169. Now Mr. Williams, taking into consideration the Cession Act, the report of the commissioners and your examination of the ground, state whether you reached the conclusion as to where the true location of the boundary between the States is either in that Slick Rock or Hangover country and where the commissioners intended it should be?

A. I might say I never reached a positive conclusion but with all the study I have ever given that part of the line in there I have never been able to see that they could have done anything else than to go over Hangover Ridge and show what they have shown on their plat and make the report that they did.

Q. 170. From those considerations if you had to settle the controversy and locate that line where would you locate it, and whether along the Hangover Ridge or up Slick Rock and by way of Fodder Stack Ridge to the Junction?

Mr. MATTHEWS: We object to that on the part of the State of North Carolina as incompetent and irrelevant.

A. From the face of the map and the reading of the report I would locate it on the Hangover Ridge.

Q. 171. Then what did you mean by a "positive conclusion" a while ago?

A. Well I mean by that I am still open to conviction about it, that if I should go there and find the line differing somewhere from what I now think it is, I would be willing to admit that I was mis-

taken that much, that there might be some discrepancies in what I now think the line is.

Q. 172. You mean you would simply be open to reason and proof about the matter?

A. Yes.

Q. 173. But as matters now stand from the examination
2044 made by you and upon the considerations stated in your opinion the line runs up Hangover Lead and over Hangover Mountain?

A. I think so, taking the report and the map as my guide in the matter.

Q. 174. Mr. Williams, if you had run a line down the mountain on the North side and reached a point at the Hemlock which you have marked as a fore and aft line tree and then made a report of your subsequent running as follows: thence to the main ridge and with the extreme height thereof, where would you have gone in that locality?

A. To the Hangover Ridge in the most direct way and then along the Hanngover Ridge over Hangover.

Q. 175. Then suppose you had continued the call of your running as follows: "From Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhills Towns, near the head of the West fork of Tellico River." How would you run that line?

A. Would have followed the divide of the waters.

Q. 176. Is the ridge dividing the waters the main ridge from the Tennessee River around to Jenks Knob?

A. Yes.

Q. 177. I will ask you to state whether in your opinion from that map of 1821 and the report of the commissioners the State Line crosses the river directly from that Hemlock fore and aft tree on the North bank—you can see the map there before you and the report of the commissioners at that point is as follows: "and crossing Tennessee River at a distance of 65 miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain."

A. Well the plat shows they crossed the river on the same line on which they run to the river and from that I would think they had crossed the river directly from the Hemlock.

Q. 178. State whether or not a line projected from the fore
2045 and aft marking on that Hemlock tree on the bank of the river would cross the river directly at that point?

A. Yes, that is the indication.

Q. 179. That is what the fore and aft marking on a tree means?

A. Yes, to approximately show the direction of the line.

Q. 180. At that immediate point the river is making sort of a bend?

A. There is some slight bends there, no very particular bends in sight.

Q. 181. You saw no particular bend in the river?

A. Yes, some slight bends in the river from there, but not right at the Hemlock.

Q. 182. I will ask you whether, in your opinion, running the State Line from that point on the South side of the river from the marked Hemlock over the Hangover Ridge or Lead over Hangover, Hao, Stratton Bald by way of Laurel Top, Mitchell Lick, McDaniel Bald, the ridge, the divide between the head waters of Tellico on the West and Snow Bird and other streams on the West around to Jenks Knob, would comply with this call in the commissioners' report: "From Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain"?

Mr. MATTHEWS: We object to that as incompetent.

A. It would comply with the call.

Q. 183. Now I will ask you to state whether, beginning there at that marked Hemlock on the North bank of the river running down the river first almost due North and then bending to the West with the river to a point on Mr. Burns' map, complainant's Exhibit "D" where a letter "B" appears, thence up Slick Rock Creek a distance of about five miles, thence up Fodder Stack Lead to the Fodder Stack Ridge, and then Southwesterly along Fodder Stack Ridge to Junction, and then along the main ridge by Laurel Top to the place called "County Corners," and by State Ridge, and thence along State Ridge to where it ends, then crossing the Tellico River to some point on a ridge leading down from Jenks Knob and thence along Jenks Ridge to Jenks Knob would, in your opinion, conform to this call in the commissioners' report: "From the Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain"?

2046 A. No, it would not comply with that call.

Mr. MATTHEWS: We object to that on the ground that it is the very question that is before the court for determination.

Q. 184. Now going back a bit Mr. Williams. In the early part of your deposition you referred to some point on the line North of the river at a sharp turn in the line from which you made some observations. Was that sharp turn at Lone Pine?

A. Yes, it is at a place we know as Lone Pine. I don't know to what extent that hill is known by that name, but I heard it called that since I first went there.

Q. 185. Could you designate it on this map, Exhibit No. 1 to Hale's deposition?

A. Yes.

Q. 186. Please do so?

A. I have done so putting the letters "L. P." in red ink at the point.

Q. 187. Since you have done that just write out in full there so it will spell out the words "Lone Pine?"

A. I have done so.

Q. 188. Now I will ask you to state Mr. Williams whether from

that point Lone Pine looking across to where it is claimed by North Carolina the line runs up a lead to Fodder Stack Ridge you weren't looking—you wouldn't look rather across the foot of the Hangover Ridge as it nears the river?

A. Yes.

January 6, 1911, at 12:40 P. M. the further taking of proof was adjourned to 2:00 o'clock P. M.

January 6, 1911, at 2:00 P. M., the further taking of proof was resumed, pursuant to adjournment.

Present (For North Carolina): C. B. Matthews, Esq.; Ben
2047 Posey, Esq. (Mr. W. R. Hopkins).

(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

JOHN L. WILLIAMS, resuming the stand for further examination, deposed and said:

Direct examination continued by Gen. CATES on behalf of the defendant, State of Tennessee:

Q. 189. About how far from the river on the South side along the Hangover Ridge or Lead would be the point that you look over in a direct line from Lone Pine to where this lead running up from Slick Rock joins the main Hangover Ridge?

A. By the ridge it would be nearly a mile and a half from the end of the ridge.

Q. 190. You mean a mile and a half from the river?

A. Yes, and from the mouth of Slick Rock Creek as measured on the main ridge.

Q. 191. Mr. Williams, you have said, in substance, something like this: that about the only thing on this map of 1821 that would indicate that it might have reference to a line on Slick Rock or Fodder Stack was the sharp turn to the Southeast in the line on the map between six and seven miles South of the river?

A. Yes, that is the point I referred to.

Q. 192. Now suppose about that distance from the river running the line over Hangover the surveyor if an actual survey was
2048 made had by mistake or accident or carelessness put down a call South so many degrees East when he should have read from his instrument South so many degrees West, that mistake in misreading his instrument would make considerable change in the direction and shape of that line from that point, wouldn't it?

A. That might account for that abrupt turn.

Q. 193. Is that an exceptional or a sort of a common error to misread notes or put them down wrong in surveying a long line?

A. I might say that that is a common error in compass surveying.

Q. 194. If that line from that point where that sharp turn appears to be should run Southwest any sort of a degree rather than Southeast along from there over the undisputed line between Stratton Bald

and Laurel Ridge it would conform approximately to this line as laid down on Hale's map between those points, would it not?

Mr. MATTHEWS: We object to that as very leading.

A. Well I see on Hale's map that there is quite a long ways on that map where he shows the line as running to the Southeast.

Q. 195. To the Southeast?

A. Yes, that is the general direction of the line.

Q. 196. Along what points do you mean?

A. Well from Cove Gap at the head, North of the fork, to Tellico River to Laurel Top. The trend is Southeast as shown by Hale's Exhibit No. 1, but he took the whole line from the Junction to McDaniel Bald. The trend of the whole line is to the Southeast.

Q. 197. Well, I don't think you caught the point in my question back there. It is in substance this: if where this sharp turn appears South of the river some six or seven miles according to the scale of this map, the next course should be instead of South so many degrees East, South so many degrees West, the line there would turn in the direction of the line shown on Hale's map to run from Hao down toward Junction and thence out along the undisputed line to Laurel Top?

A. Yes.

Q. 198. Then I will ask you whether you have the instruments here now by which you can determine with a reasonable de-
2049 gree of accuracy the width of this Tennessee River at the point where the boundary line crosses it according to the scale of this map and as laid down on the map?

A. Yes, I have instruments with me.

Q. 199. Will you please use those instruments and tell us what width is given to that river at that point on that map according to its scale?

A. As near as I can measure it is 176 poles or 2,904 feet.

Q. 200. Now will you examine the angle at which that line crosses the river as laid down on this map of 1821, the original map here before you, according to the course shown thereon or as nearly as you can tell it and give in your answer the course of that line?

A. I have examined it and measured it close as I can and find it South 69 degrees West.

Q. 201. Now then please lay down a line South 69 degrees West on this map, Exhibit No. 1 to Hale's deposition—making the line a mile long from the point North of the river where Mr. Hale in response to a question on cross-examination laid down a line South 80 degrees West. Instead of doing that and further marking up the map, I will ask you how many degrees East of the line so laid down by Hale is South 80 degrees West that course would be?

A. Be 11 degrees East.

Q. 202. Be 11 degrees East and South toward the Hangover Ridge?

A. Yes.

Q. 203. Now Mr. Williams have you examined the bearing—that is the course of this line North of the river with an instrument so that

you can for some distance North of the river tell its course or bearing as shown upon this map of 1821? If so, give it to us?

A. I have examined the map and with instruments, and I make the course from the 58th mile circle to the 65th mile circle South 47½ degrees West.

Q. 204. Have you any other courses noted on that line?

A. The course from the 65th mile circle to the turn in the line where the line turns to the left some six miles South of the river I make South 57 degrees West from the map.

Q. 205. I will ask you to state Mr. Williams whether there is anything on this map that would indicate that the line reached
2050 the river a practical straight course from the last mile tree or mile circle North of the river and then turned down the river for a distance of a half a mile or for any distance whatsoever?

A. No, there is no indication of it on the map.

Q. 206. I will ask you to state whether arbitrarily assuming that the line crossed the river just below the mouth of Slick Rock and measuring and taking courses and distances from that point would make a difference in the entire remainder of that line between the Tennessee River and the Hiawassee River as to its general bearing?

A. To assume that it did cross at the mouth of Slick Rock Creek, when it does *not*, or if it doesn't and prolonging the line by bearing and distance from there on it would necessarily be wrong all the way I should think and I shouldn't assume that it did pass by some point when two or three points that are well known could be taken, than by assuming another point that is not known.

Q. 207. How long were you over there in that country North of the Tennessee River examining it Mr. Williams?

A. Three days the first time I believe in December, 1909, and three days in September, 1910.

Q. 208. I will ask you to state whether, in your opinion, any surveyor however competent he may be, can go into that country on the North side of the river there and with the Cession Act and the Acts of both States in relation to this line and the report of the commissioners and this original map of 1821, or a copy of it, and within 24 hours determine where that line runs?

A. No, I don't think so.

Q. 209. Is there anything on that North side of the river taken in connection with the Acts to which reference has been made a*b*d this map that would point so certainly to a route up Slick Rock as would enable a surveyor within 24 hours from the North side of the river beyond question that that line run up Slick Rock Creek?

A. No, there is not.

Q. 210. Have you ever examined this map of Mr. Burns
2051 and noted the angle at which he has the line crossing the river down there below the mouth of Slick Rock?

A. Yes, I have examined it.

Q. 211. Now tell me at what angle he has it crossing that river down at Slick Rock according to his own map—I mean what is the course of that line crossing the river?

A. Has an angle of about 18 degrees.

Q. 212. At 18 degrees what?

A. That is the line as drawn across the river the general course makes that angle, but he shows the line crossing nearly perpendicular to the river—that is his measurement across the river. I thought you spoke of the general course on *on* through on the North side of the river.

Q. 213. His map shows North and South and East and West?

A. Yes.

Q. 214. Now I want to know what is the course of that line that he has drawn across the river with reference to being North or South or Southwest?

A. Well it is about Southwest.

Q. 215. That means South 45 West?

A. Yes, it is about that course.

Q. 216. I will ask you to state Mr. Williams examining this map of 1821, whether there is anything on that map that shows the line was run up and crossing back and forth any stream just South of the river as it is run on this map by Mr. Burns?

A. No, it does not show such a line.

Q. 217. Have you got your notes showing distances actually run between any mile trees North of the river?

A. No, I didn't locate any mile trees except the 59th. I was shown other points claimed as the mile trees, one of which had a stake in rocks.

Q. 218. What mile tree was that said to be—you recollect?

A. 62 I believe.

Q. 219. Did you run out any even miles from the 59th mile tree?

2052 A. No.

Q. 220. What was the discrepancy?

A. About 19-2/5 poles.

Q. 221. Over or under three miles?

A. I am giving you the 61st mile tree and it is over—that is 19-2/5 poles more than the 2 miles.

Q. 222. You mean you are giving the distance between the 61st and 59th mile tree and that distance measures out 19-2/5 poles over 3 miles?

A. Yes, and I have the 62nd mile tree and noted as a North Carolina corner tree at the place where the 62nd mile tree stood and which was pointed out to me, and I have it noted as 3 miles and 36 poles from the 59th mile tree.

Q. 223. And that shows a discrepancy of 36 poles in 3 miles?

A. Yes.

Q. 224. And what discrepancy between the 61st and 62 mile tree?

A. That would make the discrepancy between the 61st and the 62nd, 16-3/5 poles.

Q. 225. How many feet?

A. 274 feet.

Q. 226. That is a discrepancy of 274 feet in one mile?

A. Yes.

Q. 227. Now you have said that you have done some surveying

along that line from the Hiawassee River Southward to the Georgi Line before you ever went up into this disputed country—what di you discover about the bearing of the line there where they wer claiming to run a due South line?

A. Away from the river from that line the magnetic line woul be South 5½ degrees West and I run the line on that bearing Then I run the line Northward from the maple tree which is sti standing to the North bank of the river and at a place shown m as the spruce pine tree, but at that point I was about 12 to 14 pole off the line. I then continued on along Northward from the rive and at a short distance found a marked tree from which I mad calculations showing that the bearing of the line was 7½ degree instead of 5½, but after getting on the North side of th
2053 river I continued the former bearing of South 5½ West o North 5½ East, and I also found that between the mapl tree and the point shown me as the place where the spruce pin tree stood, and it was necessarily very close to the point I foun the mile as called for to be about a mile and 20 poles.

Q. 228. That line from the Unaka Turnpike in the commis sioners' report appears as follows: "from thence a due course South two miles and two hundred and fifty-two poles to a spruce pine o the North bank of the Hiawassee River". Is that spruce pine sti standing?

A. No, it is not there.

Q. 229. Anything to indicate where it was?

A. No, and the only way it can be determined is to take th marks a short distance North of the river and prolonging the lin on the bearings found located it as being on the bank of the river.

Q. 230. And then the next course and call in the commissioners report is: "Thence up the said river the same course, about on mile, and crossing the same to a maple marked W. D. and R. A. o the South bank of the river." That is the maple that you hav described in a former part of this deposition?

A. Yes.

Q. 231. Did you actually measure out that line?

A. Yes.

Q. 232. How long did you find it to be?

A. I couldn't state the distance exactly, because the spruce pin tree is not standing, but approximately one mile and 20 poles.

Q. 233. That is a mile and 330 feet?

A. Yes.

Q. 234. Now is that line as it is projected from that maple o to the Georgia line and as it is marked on the ground a straigh line?

A. I don't know of my own personal knowledge. I know it i the talk and the tradition of the country that it is not straight an some of the old maps show it is a crooked line.

2054 Q. 235. Now after your examination and study of thi map produced here by Mr. Quarles in connection with you actual examination of the territory through which it is supposed to run and along the undisputed parts of the territory, what is you

opinion in regard to this map in relation to its accuracy as a guide for a surveyor or an accurate laying down of the line?

A. I have no confidence in the map as a guide to retracing the line taking the point where it crosses the Hiawassee River the line actually crosses the river three times.

Q. 236. Well now I will ask you what, in your opinion, the map does show to a surveyor?

A. The only thing it shows to me of any value to me that it is the top of the mountain practically nearly all the way and that from where it leaves the mountain it runs a straight line to the Georgia State Line, at least it is indicated as a straight line.

Q. 237. Now Mr. Williams, I call your attention to this map of 1821 and a point on the line where there are two mile circles very close together, one on either side of a place where the paper was pasted together. Have you any opinion about those two circles?

A. No, I have never solved that to my satisfaction. I don't know what it means.

Q. 238. I will ask you to state whether or not the appearance of this map indicates that it had been made by the same hand, the same man?

A. Yes, it does.

Q. 239. Now if those two circles were laid down there on either side of that edge where the paper is joined together to indicate just one circle and because that was the proper place, proper way, to designate one circle at such place, do you know of any reason why the same thing should not have been done on the lower end of the map where a mile circle appears just to the North of where the paper is pasted together there?

A. No, inasmuch as it appears that all of the sheets were made by the same person. If he made the mile circle on each sheet in the first place, I don't see why he would put the same thing at the second place.

2055 Q. 240. I will ask you to examine here carefully with a glass here another point on the lower end of the map where the two sheets of paper were joined together at sometime a mile circle doesn't appear just North and East of the place where the sheets are joined?

A. There is one to the North and East and very close to the place where they are joined together.

Q. 241. And none on the South side of that place where they are joined together?

A. No sir.

Q. 242. Now Mr. Williams, suppose that parties running that line did sight from one point a straight line to another point ahead and then run around the contour of the mountain a mile the distance between the two points sighted from and to according to the straight line would be much shorter than the distance run around the contour of the mountain, wouldn't it?

A. In many instances it would be and to *to* take the bearings of one line and the distance of another they would have something they could not plat at all where the mountain was crooked. Taking

the bearings of two points the proper distance being a mile they might measure a mile and a quarter around the crest of the ridge and note their course with the distance gotten on the other point would place that line one-fourth of a mile out of place.

Q. 243. From the very place that was done, the course and distance would be all out of line, would it not?

A. Yes, to that extent.

Q. 244. Do you know of many places along this line from which you have run up from the 59th mile tree to Jenks Knob or Southward in which you can run a straight line for a mile?

A. I think the longest line I could ever get was about 100 poles. The average of the lines which we had on the traverse that I made would probably not be more than 25 or 30 poles.

Q. 245. Did you run between the 58th mile tree and the 59th mile tree?

A. No, except the 200 or 300 feet North of the 59th mile tree which I have heretofore mentioned.

2056 Q. 246. Can you give me the courses of that line North of the 59th mile tree?

A. The first is South 63 West 8 3/5 poles; South 55¾ West 4 4/5 poles; South 45¾ West 7 18/25 poles to the 59th mile tree.

Q. 247. What is that last call?

A. 7 18/25 poles.

Q. 248. What is its course?

A. South 45¾ West.

Q. 249. What is its reverse course?

A. It would be North 45¾ East.

Q. 250. Then that isn't a straight line along there?

A. No.

Q. 251. How does it appear on this map to be laid down?

A. Shows a straight line from the 58th to the 59th mile tree.

Q. 252. There seems to be no dispute about where the State Line reaches the Unaka Turnpike. I will ask you to state what route you would travel between that point reversing the calls of the commissioners' report from the Unaka Turnpike to the Little Tennessee River?

A. Take the top of the mountain following the divide of waters.

Q. 253. Along what route would that lead you, giving the names of places known on these maps?

A. Well it would go over Beaver Dam Bald, Jenks Knob, Tipton Knob, McDaniel Bald, Cold Spring Gap and Laurel Top.

Q. 254. That is to that point around the headwaters of Tellico River?

A. Yes.

Q. 255. Now from Laurel Top on Northeast?

A. Haw Knob, Stratton Bald, and Hangover.

Q. 256. Mr. Williams, if a surveyor lays down in his report of his survey a call from one natural object to another, what does that indicate in regard to the course followed by him from the first of said objects to the second one called for?

A. I don't know that I gather the meaning of your question exactly.

Q. 257. Does it indicate that he runs a direct line from one of said objects to the other?

2057 A. It does if there is nothing said to the contrary.

Q. 258. What does this call indicate to you: "crossing Tennessee River at the distance of sixty-five miles from the beginning; from Tennessee River to the main ridge?" What do you understand to have been meant by that call from Tennessee River to the main ridge?

A. I understand that to mean to go to the main ridge, directly to the main ridge as the closest place.

Q. 259. Well if you run directly to the main ridge you would necessarily follow the shortest line, wouldn't you?

A. Yes.

Q. 260. Now I believe you said that you had considerable experience in surveying sectional lines in the Ocoee District, did you not?

A. Yes.

Q. 261. About how frequently along that line, those lines which were run out some 73 or 74 years ago did you find marked trees bearing the original marks of the line?

A. I didn't average finding two trees to the mile now, and but for some monuments and corners scattered over the country I couldn't with any degree of accuracy re-locate the lines now.

Q. 262. What attention have you given Mr. Williams to the effect of the lapse of years of marks on trees, and weather conditions, etc.?

A. I have had that under close observation particularly for 10 years.

Q. 263. State what has been your experience and observation in regard to the disappearance of marks on trees in the last 15 or 20 years, very old marks?

A. They are disappearing very rapidly.

Q. 264. Now when you went over this line leading from the river up the Hangover Lead or Ridge over Hangover, did you search for marked trees?

A. Yes.

Q. 265. Now tell us what you found?

A. Well I found a great many marks of different ages and different kinds, but I never found anything that I was certain were the original State Line marks. I found some trees with some very old marks, and I found a tree with some very old marks that

2058 I undertook to cut out and found that the tree was hollow, decayed on the inside so that I couldn't determine the age of the marks. Another tree I found three scars on the outside and which I thought might be marks and on cutting into the tree I found the tree had been struck with something and at about the proper age, but I couldn't find the exact mark on the inside of the tree, that is at the place where the tree had been struck I didn't find the cut of an exact mark. I found another tree, the mark I don't remember distinctly about it whether I found one or two other trees

that I would have cut into if there had been any prospect that I could get the old marks out of them. Some trees we found didn't show to have been marked through the bark, while others showed to be hollow with practically no chance of going into the tree and getting the old marks out of the tree if they had been in it.

Q. 266. So while there were plenty of marks, apparently State Line marks along that ridge, it was impossible for you to determine their age?

Mr. MATTHEWS: He didn't say that General.

Q. 267. Now what did you say?

A. I found a great many marks along that ridge, but few of which were old marks, but I didn't find any which satisfied me they were the original marks.

Q. 268. Were they similar in form to the State Line marks?

A. Some of them were. As many as three I remember were.

Q. 269. What age did they seem to have, from outside observation?

A. Two of the trees or more appeared to be old enough for the original marks, that is 88 years old. By far the greater number of marks that I saw were comparatively new marks that didn't need any close examination to show that they were made too recently.

Q. 270. Why couldn't you satisfy yourself about those markings on two trees that apparently had the right age?

A. In the one that had the three scars in line over each other and which I cut into didn't show the actual cut of the ax and for that reason I cannot say that it was an ax mark. The other was decayed in the inside so that I couldn't tell whether it was an ax mark what depth it was or what age it was. I knew from the outside that that was an ax mark.

2059 Q. 271. Did you examine that Sourwood that was blocked by Hale years ago?

A. Yes, but I didn't examine it very closely. He pointed out the marks on the tree to me, but knowing that we couldn't count the growth of it we had a block out of it. I didn't undertake to make any close examination of the tree. I didn't think it practical to count the growth of the Sourwood.

Q. 272. Were there any other trees blocked along that line—did Mr. Hale show you that—did Hale show you any other tree that he blocked?

A. Yes, he showed me two or three trees, the location of which I don't now remember, that he said he had blocked.

Q. 273. Now Mr. Williams give us in your own way a description of State Ridge and why in your opinion the State Line doesn't run along that ridge down to and across the Tellico River?

A. I was first in that vicinity about 1904 going to the top of the mountain at Stratton Meadows and over Laurel Top and down the State Ridge to Tellico River. I was out there on other business at that time and wasn't particularly interested in the State Line at all. Before going to the divide in going down the State Ridge Mr. Hale said to me that he wished I would see if I could locate that divide at the head of the river as we walked down State Ridge and I did so and found it and I noticed then that there was a considerable drop

from the State Ridge down to that gap and which I since learned is called the "Mitchell Licks," but going on down the State Ridge a short distance I could then see it was not the divide very clearly.

Q. 274. Well does the State Ridge as it leaves the main ridge up there at County Corners run in a continuous ridge to any river or does it divide itself?

A. Well not very far from the junction of the divide with the State Ridge the ridge forks and the Rough Ridge is the higher and more prominent ridge at that point and in fact all the way on down to and very near the river and in December, 1909, when we were out there I was running the instrument and carrying the
2959 traverse myself and when we came to the forks of those ridges and I got off and went on down Rough Ridge until called back by Mr. Hale, and going from the forks of the ridge on down to the river I repeatedly sighted across the instrument over to Rough Ridge and noticed all the way down that it was higher than the State Ridge sighting about perpendicularly across all the time.

Q. 275. Well, does State Ridge run any where, or does it just dwindle out?

A. It runs out to nothing just before reaching Tellico River and then in getting to the end of it I think I would have been entirely lost not knowing what to do in what direction to run any further if I had not had Mr. Hale along with me to show me where North Carolina claimed the line. I don't know how long it would have taken me to find it.

Q. 276. Is there any natural objects or anything at all to show you where to cross that river except the marked Holly?

A. Not a thing.

Q. 277. Describe the topography of the country North of the Tellico River at the point where the State Ridge terminates and also South of the river and around the Holly and the river itself?

A. At the end of the State Ridge where it dwindles away to where there is no more sign of it there is a road turning down the river from the end of the State Ridge and while it is not flat it is what I would term the bottoms of the river 373 feet from there to the bank of the river, the river itself is 66 feet wide and then from the South bank of the river to the first rise is 330 feet, then it rises up slightly and at the distance of 322 feet more we reached the Holly; then from the Holly continuing up that rise we measured 610 feet to where we crossed a small branch. It is a branch that I don't think would run the entire year, but considerable water in it at that time. I stopped and got a drink of water in the branch. Then from that branch the ground rises very abrupt, in fact goes right up the side of Jenks Ridge to the top of the ridge as we run the line and the line was pointed out to me by Mr. Hale as being the line claimed by North Carolina.

Q. 278. Did you find any trees bearing State Line marks between that Holly and Jenks Knob?

2961 A. No.

Q. 279. Now what about the markings on that holly?

A. I made an exact picture of those figures and letters on that tree as near as I possibly could. The S is plain and distinct, very

plain. There is a stem apparently of something else after it which might *be* so far as I know be the part of a 6 or the part of an O. I don't think there is any question about the letter M. While there is only three lines of the M I don't think it could stand for anything else.

Q. 280. Now I will ask you to make a picture of that in your answer, and I will ask the stenographer to leave a place and I want you to take it from your book just as you have it delineated there?

A. I will do so—it is like this:

Q. 281. What do you say about the age of those marks?

A. If they were put on there during the survey in 1821 they are the plainest marks I ever saw or anything like that age on any kind of a tree, but I am not familiar with the way a Holly holds marks. The marks look to be about 30 or 35 years old to me.

Q. 282. What kind of a bark is there on a Holly tree?

A. Ordinarily it is slick, smooth bark, and very much like the Beech.

Q. 283. What has been your observation in regard to people cutting their names on and making letters and figures on smooth bark trees throughout this country, such as the Beech and Holly along trails and roads, camping places and even out in the woods where there is no trail?

A. I have seen letters, names and dates and pictures and everything that could be cut on trees as lettering or signs almost, on hundreds of trees with smooth bark in the woods and along trails, streams or almost anywhere else.

Q. 284. Are smooth bark trees usually selected for that purpose, rather than any other kind of trees?

A. Yes.

2062 Q. 285. Now tell us about whether you found any marked trees along State Ridge over there?

A. Yes, I found some marks, but marks which I thought were more recent marks, and I didn't search that line along the crest of that ridge very thoroughly because Mr. Hale told me in the beginning that it had been blocked until there wasn't anything left to resemble a mark, but I did on several occasions step in the best of timber and looked for marks.

Q. 286. Did you find them?

A. No, I didn't find anything that I thought was the original marks. I found other marks.

Q. 287. What kind of marks?

A. I think I saw two or three different kinds. I saw one tree with three hacks on it, very large Oak that was pointed out to me as marks which were claimed to be the original marks. I looked at the tree. They were not as old marks apparently as I had been seeing at other places which were the original marks, and I don't think they were.

Q. 288. Now Mr. Williams, going Northeasterly from the Tellico River to State Ridge and thence up the State Ridge, what is the rise?

A. You mean what is the average?

Q. 289. Yes.

A. I made a calculation from my notes.

Q. 290. Give it to us and compare it with the elevation on the North side of the Tennessee River on the State Line?

A. Taking one of my readings from the barometer of the elevation, 2576 feet North of Tellico River and another reading at the river, I find there is a difference in elevation of 520 feet. That is a drop of one foot in every 5.

Q. 291. What about the average on the North side of the Tennessee River?

A. From my last reading of the barometer on the North side 1447 feet from the reading and the barometric reading at the river I find there is a difference of 625 feet, or one foot descent for every 1.67 Horizontal.

2063 Q. 292. What does that indicate North of the Tennessee River, a gradual or rather abrupt descent?

A. It is very abrupt.

Q. 293. What does it indicate going down to the Tellico River from State Ridge?

A. A much more gradual descent.

Q. 294. Is there any physical continuation of State Ridge South of the Tellico River, Mr. Williams?

A. No sir.

Q. 295. How far above the point where State Ridge ends on the North side of the river is it to where there is another ridge on the South side of the river?

A. I do not know except from estimating it. I went down the Jenks Ridge from Jenks Knob and off to the river and down the river and I thought it was something like a half a mile, but that is merely an estimate.

Q. 296. Is there any continuation of Rough Ridge South of Tellico River?

A. Well there is a ridge running up on the South side of the river below the line which we run across there, but I don't remember whether it is any more nearly a continuation of Rough Ridge as the Jenks Ridge is a continuation of the State Ridge.

Q. 297. You have been over Stratton Meadows?

A. Yes.

Q. 298. What sort of a place is it?

A. I think it is the flat-est gap I have ever seen on that range of mountains.

Q. 299. Cultivated land up there?

A. I suppose it has been, a large cleared place up there, which I know as the old fields or meadows.

Q. 300. Was the grave of old man Stratton pointed out to you?

A. Yes, at a point near that.

Q. 301. The State Line runs between the head stones of that grave?

A. I don't remember, I remember it is on top of that mountain.

2064 Q. 302. Is Stratton Meadows indicated on this map of Hale's as the "Meadow Gap?"

A. Yes.

Q. 303. There is no difficulty about the location of that line at Meadow Gap or Stratton Meadows, is there?

A. I never heard of any.

Q. 304. What waters rise just West of that Meadow Gap, if you know?

A. The North fork of Tellico. I went up the North fork of Tellico all the way and up into that gap the first time I was ever there.

Q. 305. How close does it rise to the top of that mountain at that gap?

A. Just from recollection I remember it as about 150 to 200 feet, but I am not positive about that, but that is my recollection. The spring on the side of the ridge on the North Carolina side is closer than the water on the Tennessee side as I remember.

Q. 306. So the water runs both ways from that point as the divide?

A. Runs both ways from very near the gap.

Q. 307. And you say the headwaters of Tellico commence about 150 feet to the West?

A. 150 or 200 may be.

Q. 308. And the headwaters of what stream in North Carolina commences about the same distance to the East?

A. I don't remember the name of the stream but it seems to me it was Snow Bird. I know of a spring very near to the gap and it is a camping place.

Q. 309. How does Stratton Meadows or Meadow Gap compare in elevation there with other gaps around the headwaters of the middle fork or the main South fork of Tellico River as you run it by way of Mitchell Lick, Peckerwood Gap, McDaniel Bald and so on to Jenks Knob?

A. The gap at Stratton Meadows is higher, but as compared with the adjacent gaps it is about as low as any gap that I remember any where on the State Line.

Q. 310. What is the lowest gap, according to your barometrical measurement on that ridge which runs around the head of Tellico River?

2065 A. Tipton Gap.

Q. 311. What is the elevation of Tipton Gap?

A. 3325 feet as taken with aneroid barometer.

Q. 312. Well, how does the elevation of Stratton Meadows or Meadow Gap compare with the elevation of Mitchell Licks? Is it higher or lower than Mitchell Licks?

A. It is lower.

Q. 313. How many feet according to your measurement or reading of the barometer?

A. 110 feet lower than the gap at Mitchell Licks.

Q. 314. Mr. Williams, how much experience have you had in map making of surveys and for what length of time?

A. I make maps of almost all the surveys I make and have during all of my experience.

Q. 315. How long do you think it would take a competent surveyor and draftsman to make this map of 1821?

A. Well the map shows that would take a week to make the map, but it probably might be made in three days.

Q. 316. Suppose you had been one of those surveyors running that line from the Cataloochee Turnpike to the Georiga Line and that you had been delegated to the work of making the map, how long would it have required you to make a map showing that survey?

A. I would want a week to do it.

Q. 317. In your surveying down in the Ocoee and Hiawassee Districts, state whether you have had to do with much or little surveying which involved the Eastern boundary line of the Hiawassee District and of the boundary line between the Hiawassee District and the Ocoee District?

A. In the Fall of 1902 I spent about 10 days on the boundary line between the Ocoee and Hiawassee Districts and again in the Spring of 1903 I spent some two or three days on the same line and near the same place. From about four miles South of Tellico River to about five miles North of the Tellico River in the two examinations during nearly all of that time I was hunting for marks of the original survey of the line.

2066 Q. 318. Did you have before you a copy of that Hiawassee Purchase Map as it is called?

A. No.

Q. 319. Then I will ask you to state whether or not that Eastern boundary line of the Hiawassee District is difficult or easy to find?

A. I couldn't find it at all for that distance of nine miles, unless we had the courses and distances given.

Q. 320. Did you ever see any courses and distances for that line.

A. Yes, I saw a copy of them. I can't now recollect whether they were a certified copy or not. I had a copy of it.

Q. 321. You don't know whether it was the copy of an original, or a copy of a copy?

A. No, but I went on that line South of the Tellico River with Mr. Hale on that examination.

Q. 322. Whose copies were they said to be?

A. Well, they were just shown to me and given to me as copies of that original survey. I don't remember that the copies had the name on them, but I started to say that I went back on that line to where marks had been found with Mr. Hale, and we had those bearings and distances back there where the line was marked. Then I am very familiar with the South end of that boundary line near Hiawassee River where it runs with the top of Stars Mountain and nobody has disputed it, and yet I have never seen a mark on that mountain.

Q. 323. Do you know whether all of the Ocoee District in Polk County was surveyed out and sectionized up to its limits by the Georgia Line on the South and the North Carolina line on the East down there where the North Carolina and Tennessee line join there and the Georgia Line?

A. There is one whole range, Range 4 East on the Frog Mountain where I have never found any original marks South of the last Township line which on one side is more than two miles from the State Line and at the other side of the range runs into the State Line.

Q. 324. Within that distance of two miles there ought to
2067 have been some sections, oughtn't there?

A. Yes.

Q. 325. Any dispute about the State Line along there?

A. No, it is marked.

Q. 326. Where is that Frog Mountain?

A. The main top of the Frog Mountain is just a little North of the Tennessee and Georgia State Line and about eleven miles from the corner of Tennessee.

Q. 327. Taking into consideration the length of that line from the Catalouchee Turnpike to the Georgia State Line, the character of the country traversed and such other conditions as would surround a surveyor or surveying party consisting of three commissioners and two surveyors, chainmen, pack men, etc., as must have accompanied the commissioners in 1821, how many days, in your opinion, would it have required to make a reasonably careful and accurate survey of that line according to the instructions given the commissioners running from the Catalouchee Turnpike Southeasterly across to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing Southwestwardly on the extreme height thereof to where it strikes the Tennessee River about seven miles above the old Indian town of Tallahassee crossing Porter's Gap, at the distance of twenty-two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles and crossing Tennessee River at the distance of sixty-five miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain, and thence along that line as called for in the report of the commissioners to the Georgia Line?

A. I know but little about the country between the Catalouchee Turnpike and the Tennessee River to make an estimate. From the Tennessee River to the Georgia State Line I know the country very well.

Q. 328. Well estimate that end of the line, taking into consideration the fact that the commissioners were to search out a line along the extreme height of the main ridge of the mountain?

A. They ought to have at least 20 days.

2068 Q. 329. You mean 20 working days?

A. Yes.

Q. 330. For the 51 or 52 miles South of the Tennessee River?

A. Yes.

Q. 331. What sort of a survey do you think could have been made of that line from the Catalouchee Turnpike to the Georgia State Line in 30 working days or less?

A. Placing an estimate on my information from the Catalouchee Turnpike to the Tennessee River, it would be a very slack survey.

Q. 332. Tell us what you mean by "a very slack survey" Mr. Williams?

A. Well I mean to say that it would be very inaccurate and poorly done to do it in 30 days.

Q. 333. Is that original map before you? and is it dated?

A. It is before me. It is dated August, A. D., 1821.

Q. 334. No particular date in August given, is there?

A. I don't see any.

Q. 335. So there is nothing on that map to show whether it was made on the first day of August or the 31st day of August, is there?

A. No, I don't see any other date.

Q. 336. Now Mr. Williams, you have told us about going back into that country North of the Tennessee River in 1910 in company with Mr. Hale and Mr. McNabb. For what purpose did you go there?

A. Well we went there to go over that part of the mountain we had been over before and again take a look at the topography of the country and especially on the South side of the river and that Mr. McNabb might see it also. We went there also to examine a tree on the North bank of the Tennessee River which had been testified about, so I understood.

Q. 337. That tree No. 30 described on Mr. Burns' map, as Tree No. 30 and to which Mr. Gannett had testified bore State Line marks?

A. Yes, I so understood it. Mr. Hale had what purported to be a copy of his testimony in which he had described a chestnut oak tree on the North bank of the Tennessee River, giving the diame-
2069 ter and the location of the marks on it and the approximate distance from the Hemlock and opposite the mouth of Slick Rock Creek.

Q. 338. Now did you go — that tree?

A. Yes.

Q. 339. Can you tell us what you did and what you found?

A. We also had some testimony about some trees. First, we went all the way up the river from the mouth of Slick Rock Creek finding that chestnut oak mentioned by Mr. Gannett and finding a maple tree near it and which we decided had been testified about and which had new marks which were Township marks in the Ocoee District, having a blaze between two hacks and went up to the Hemlock tree and Mr. McNabb saw that. Going back to the chestnut oak tree testified to by Mr. Gannett we cut a block out the upper side. I believe I did most of the chopping myself. The marks were very high on the tree and in an awkward place to get to to cut out. Mr. Hale chopped some but he wasn't tall enough to reach the cutting very well so I did most of the cutting myself in cutting the notches for the block. On cutting the first notch I expected to find some sign of the marks before blocking it out and did find an indication of marks but which appeared to be too near the outer surface of the tree. I then counted the growth of the tree down to that point and found it was not deep enough for the original State Line marks, so I cut into the tree still further and then we cut the upper notch—I think I cut all of the upper notch and I counted the annual rings

down into that upper notch far enough to show the State Line marks and then we blocked that block out of the tree.

Q. 340. Were there any original State Line marks in that tree?

A. We didn't find any.

Q. 341. What marks did you find?

A. We found marks about 58 years old. I believe we counted even 58 annual rings down to the marks. The marks that showed on the outside of the tree were two hacks above a blaze on both sides of the tree and as I remember the marks on the upper side
2070 of the tree didn't appear to have reached the wood with the hacks, but only with the blaze, so we only undertook to cut out the blaze.

Q. 342. What did you do with the block that you took out?

A. Well we split it into several pieces and found the blaze which I have mentioned as 58 years old and we split into one piece into one block the piece which shows the blaze on the inside of the tree and Mr. Hale took that. Mr. McNabb and I took a block each on each side of the one taken by Mr. Hale so that if necessary hereafter we might identify his block by placing ours against it. The blocks we cut didn't show the blaze, just went down to where the blaze had been made.

Q. 343. Have you got your block?

A. Yes.

Q. 344. Where is it?

A. I have it here.

Q. 345. Mr. Williams, I here show you the block which Hale exhibited with his deposition and ask you to state whether that block which you produced fits on this block produced by Hale?

A. The blocks have warped in seasoning until I would not now recognize them as having belonged together but for the annual growths which appear to fit so well.

Q. 346. Well file that block as Exhibit No. 1 to your deposition, and smooth off one end of it so you can write your initials and Exhibit No. 1 thereon?

A. I have done so.

Q. 347. You didn't block the lower or West side of that tree?

A. No.

Q. 348. Why?

A. It had the plainer better marks on it and I thought we could determine the age of the marks on the upper side all right and it looked as though the marks would soon be gone from that side and we thought it better to leave the plainer marks on the tree and take out the other?

Q. 349. Now Mr. Williams, when you went to cut into that
2071 tree, did you know what you were going to find?

A. No.

Q. 350. I will ask you this question: suppose there had been some marks on that tree cut into the bark many or a few years before 1852, the age shown by the markings produced in this block by you and Hale, what would have been the effect upon the bark of the tree produced by cutting these marks into it in 1852 or 1853?

A. As to the blaze made in 1852 or 1853 it would have obliterated any marks that had been made prior to that time and the hacks might have obliterated the hacks made prior to that time and have gone between them.

Q. 351. You mean would have obliterated the previous marking in the bark as to the bark?

A. Yes.

Q. 352. So the blaze mark appearing in that tree at that place for the reasons stated must have been made in 1852?

A. Yes, that is when the marks which were on the outside of the tree had been made, at least the blazes.

Q. 353. Now let me see if I clearly understood you. By cutting into that tree further than those marks of 1852 or 1853, state whether you cut in far enough to disclose whether there was any other marking in there 88 or 89 years old?

A. I thought so, I counted the annual rings before we cut out any of the block. That is I counted the annual rings down into the notches cut.

Q. 354. Found no marks beyond this block which you have presented here made or marked in 1852 or 1853. Is that right?

A. That is right.

Q. 355. Now I present you the block produced by Mr. D. B. Burns and exhibited with his testimony in this case as showing two hacks and a blaze in the wood 88 or 89 years old. Please examine this block and give us your best opinion as to whether or not it contains any marks in the wood 88 or 89 years old and, if so, whether any of those marks indicate a blaze made in that tree that old?

2072 A. The block at that age shows four distinct hacks without any indication of a blaze whatever.

Q. 356. Does it show the blaze in there 57 or 58 years old?

A. Very clearly.

Q. 357. Now give us your reasons why there is no blaze in there 88 or 89 years old?

A. The outer marks or blaze itself proves that there is no blaze at the inner marks, that is if wood is exposed to the weather, no matter in what way, nor whether the wood is dead or green, the weather always discolors it and the discoloration on the wood will extend as far as it is uncovered to the weather. That is shown by the outer marks or blaze in this block itself.

Q. 358. You mean the outer block or blaze or one shows to be 57 or 58 years?

A. Yes I mean the one nearest to the bark and the hacks further from the bark and toward the center of the tree shows discoloration where it was uncovered and exposed to the weather and doesn't show discoloration all the way between those hacks, and whenever any portion of the wood of a growing or grown tree is uncovered and exposed to the weather the wood which grows over it and covers that place never grows to or knits to the wood which was uncovered and exposed. All this is shown by the outer marks or blaze nearest the bark in this block.

Q. 359. Beginning at the square end of this block, the square or

upper end of this block, as it stood in the tree, does it show that the wood was entirely joined together between the hacks in the upper end?

A. Yes, it shows that it joined together at, it does between the age of the marks. There is a streak of a wood there, that has a different color to it, seems to be fast and grown to the other wood.

Q. 366. Now how does the block appear to be at the lower end between the hacks at the place where Mr. Burns claims the blaze to be?

A. It doesn't show discoloration, that is, it doesn't show to have been exposed to the weather and it is knitted together.

2073 Q. 361. Between the hacks?

A. Yes.

Q. 362. Now I do see some discoloration there in the lower end of this block between these hack marks, or these marks which you have said are hacks. I will ask you to state whether or not hacking a tree will loosen the bark sometimes a little below the hack?

A. It does and especially when the sap is in the tree in the Summertime.

Q. 363. Then if the bark is so loosened between it and the tree if the atmosphere or the rain goes in there it will produce somewhat of a discoloration?

A. It will.

Q. 364. Tell me about the character of those hacks at the lower end of this block—whether they are—where they are and of the direction that they enter the tree indicates to you as to whether they are hack marks or cuts or blaze marks?

A. They appear to strike the tree at about the same angle as the other two hacks and not in the direction one would ordinarily make a blaze.

Q. 365. I believe that you said that Tellico River where the North Carolina contention crosses it is about 66 feet wide?

A. Yes, that is the extreme width.

Q. 366. What sort of a stream did you find there?

A. Well it was about the ordinary kind of a mountain stream of that size.

Q. 367. That is, it was rocky, and full of boulders?

A. Yes.

Q. 368. Water covering the bed of the stream that was not covered by boulders?

A. Well there was water pretty much entirely across, some one in the party went ahead and cut a tree and we went across on that, and I remember in measuring the young man who was measuring using a two foot chain and walking out on a rock near enough to a boulder so that they got the distance from that boulder to the first 33 feet and they measured from that log to the South side to the edge of the water the next measurement.

2074 Q. 369. I will ask you to state Mr. Williams whether a competent and accurate surveyor in running that line if he had crossed such a stream would have indicated it on his map or report?

A. I should think any competent surveyor would.

Q. 370. Are you acquainted with that creek that runs into the

Hiawassee River down there where the State Line crosses it called on the map "Caney Creek" and called in the report of the commissioners of 1821 "Cane Creek"?

A. I have been from the mouth of it to the head of it.

Q. 371. Where it runs into the Hiawassee how does it compare with Tellico River where this North Carolina contention crosses Tellico River?

A. It is very much less. I don't think it is half as large.

Q. 372. Are you acquainted with that stream marked a "Creek" that looks like it may be about half way between the Hiawassee River and the Georgia State Line as it is laid down on this map of 1821?

A. I am not acquainted exactly at the crossing of the State Line, but I am very familiar with it below there and below the forks of the creek. There is one prong of that creek that heads up against the mountain shown South of it and enters into the creek not far below the State Line and that is evidently Turteltown Creek and Turtletown Creek where I know it and below the forks is scarcely as large as Cane Creek.

Q. 373. How does it compare with Tellico River where the North Carolina contention claims the State Line crosses?

A. Some less than Tellico River where the State Ridge Line crosses it.

Q. 374. Are you acquainted with Tellassee Creek and Abrams Creek and Citico Creek as shown on this map of 1821?

A. Yes, I have been upon all of these streams and am pretty well acquainted with Tellassee Creek and in 1903 I made a survey of that creek. When I was on that creek it was dry at places at that time and I have been on the creek at other seasons of the year and so far as I know that is the smallest stream that is shown on that map of 1821. I have been on Abrams Creek at the mouth and some two or three places above the mouth, and I have crossed Citico above
2075 the mouth, and as I remember Abrams Creek and Citico Creek they are both about the size of the Tellico where we crossed it on the State Ridge Line.

Q. 375. You mean at their mouths where they spread into the river?

A. Yes.

Q. 376. How are they up away from the river?

A. I don't know about Citico Creek. Abrams Creek where I crossed a few miles above the mouth is smaller than Tellico.

Q. 377. Were you up Cheoah River?

A. No, I didn't go up it any at all.

Q. 378. How does Cheoah River compare with Tellico River where the line crosses it?

A. Cheoah seems to be about the same width as Tellico at the point mentioned, but seemed to have a good deal more water in it.

Q. 379. Now how does Tellico River where the North Carolina contention crosses it and Slick Rock Creek compare in size?

A. I don't know the size of Slick Rock Creek enough to make a close comparison. Tellico River is larger at the point mentioned than Slick Rock is at the mouth.

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Q. 380. Is Slick Rock as big as this creek indicated down here the map as "Caney Creek?"

A. Probably about the same size.

Q. 381. Does this map of 1821 as is laid down there show that crosses Tellico River anywhere?

A. No.

Q. 382. What does it show with reference to Tellico River and forks?

A. It shows it was following the top of a mountain or a ridge a they were going around the head of Tellico River.

Q. 383. You say it shows that they were following the top o mountain or a ridge and that they were going around the head Tellico River?

A. Yes.

2076 Cross-examination by Mr. Posey on behalf of the complainant, State of North Carolina:

X Q. 1. When did you say you were first on that line from Lau Top and Jenks Knob and to the Unaka Road?

A. I was first on the line in 1905, I believe it was, from Strat Meadows over Haw Knob and Laurel Top and down the State Ri to Tellico River, but at that time I didn't go over the Jenks K and I wasn't on the Jenks Ridge. I went to the West of Jenks K and back on to the State Line somewhere between Jenks Knob Beaver Dam Bald. I couldn't now describe the place.

X Q. 2. Who was with you?

A. Mr. Hale and a man named Fitro from Clarksburg, West V ginia and a Mr. Smith who were at that time the officials connec with the Tellico River Lumber Co., and I don't remember who was along, some assistants though.

X Q. 3. Were you looking for the State Line then?

A. No sir.

X Q. 4. You spoke of one time you were going on State Rid that Hale from Laurel Top or in that vicinity told you — watch and find and where the divide of the waters broke off. Is that rect?

A. Yes.

X Q. 5. So before you got to the point you had been posted Hale to watch to find it?

A. He told me to look.

X Q. 6. And you were on a ridge leading from Tellico in a So westward direction?

A. Yes.

X Q. 7. And on to about Laurel Top and Grassy Gap?

A. Yes.

X Q. 8. And the Grassy Gap is further down the State Ridg where you went off to go around the divide—Grassy Ga

2077 between County Corners and divide still on that ridge?

A. Yes.

X Q. 9. That is a high point, is it?

A. Yes, that is hilly.

X Q. 10. Well now the Attorney General asked you if taking the report of the commissioners as your guide and the sketches etc. that you have seen if you were to go there to find where the State Line run which way would you go. You said you would go around this divide of the waters by way of Beaver Dam Bald?

A. Yes.

X Q. 11. You know what the distance is from the report of the commissioners from that point to the Jenks Ridge?

A. The distance at the Tennessee River is given as 65 miles and to the Unaka Turnpike is 101 miles, which would make 36 miles.

X Q. 12. Can you go from the Tennessee River that line and go around that divide of the waters and reach the Unaka Turnpike Road at 101 miles?

A. Don't know, because I haven't measured the distance, except from Laurel Top to Jenks Knob both the lines as claimed, but I think not.

X Q. 13. What would be the discrepancy?

A. I don't know.

X Q. 14. Wouldn't it be more than 6 miles?

A. My recollection is the distance around the head of Tellico is nearly twice the distance of the line by State Ridge and Jenks Ridge. I have those distances, but I am stating that from recollection.

X Q. 15. Well it would be at least 6 miles further, wouldn't it, around there?

A. I guess it would be that much.

X Q. 16. Now he asked you several questions about what a competent surveyor would have done. Would competent surveyors in that distance of 36 miles if they had run and marked the line make that discrepancy of 6 miles?

A. No.

X Q. 17. What does it indicate to you when they state they run that line and marked it and made a mile mark at the end of each mile—what does that indicate to you?

2078 A. Indicates that they did mark the line.

X Q. 18. Would it indicate that they had actually measured it.

A. Yes.

X Q. 19. So I understand you they would not go there in that distance of 36 miles and run and measure the line—that competent surveyors would not make that discrepancy of six miles in a distance of 36 miles if they had actually run and measured the line?

A. I don't think they would.

X Q. 20. Doesn't that indicate to you clearly Mr. Williams that the prong of Tellico run up through that line, and doesn't that indicate to you clearly that they never did run and mark the line around McDaniel Bald?

A. Taking the distance alone it would indicate that they didn't.

X Q. 21. Taking it for granted that down the State Ridge after you leave County Corners going in the direction of Tellico River there were marked State Line trees there, that across the Tellico

River a few hundred feet there is a Holly marked 86 M, an 86 mile post, taking it for granted that those things are true and the distance was 101 miles that way around to the Unaka Turnpike Road, would you say that they run and marked that line?

A. That would indicate that they run the State Ridge Line.

X Q. 22. If that was so taken in connection that there is no marked lines around this loop around McDaniel Bald, wouldn't that further indicate they didn't run and mark around there?

A. Yes if there are no marks around the head of the river.

X Q. 23. Now they asked you about the width of Tellico River where this North Carolina contention crosses. I will ask you if you don't know that it has only been a few years since there was an enormous flood there and washed that country out and that that river is three or four times larger the width of the river from bank to bank?

A. I don't know.

X Q. 24. Didn't that flood wash out the banks and the trees along the banks?

A. I don't know.

X Q. 25. Don't you know that the course of the water was divided up from that flood into several little pools or places for the water to run?

2079 A. At the time we measured it the water was in the river between the banks.

X Q. 26. Had the banks been widened—some cleared land about where that line crosses, ain't there?

A. Yes.

X Q. 27. Right near where Jim Robertson lives?

A. Yes, I remember some.

X Q. 28. Don't you remember those mountain streams when any flood comes out on them that it tends to widen the banks?

A. Yes.

X Q. 29. So you are not prepared to say what the width of that stream was in 1821?

A. No sir.

X Q. 30. Look at Mr. Hale's map. You see where he marks the North Carolina contention crosses the Tellico River and those prongs of Tellico up in there. Now where on that map is the West fork of Tellico. I will state to you it is not contended that it is in North Carolina, it is in Tennessee. Has he got it marked on there at all?

A. Not as the West fork of Tellico, but what is marked as Bald River and Kirkland Creek, and the waters of those streams is what I know as Tellico, sometimes also called the South fork of Tellico.

X Q. 31. This that he has got marked "main prong of Tellico." I will ask you if that is a fair representation of that creek or river on this map?

A. I couldn't say whether it is or not where it is marked the main prong of Tellico and I can't say whether it is below the State Ridge or not. *Tipton* Creek is marked on there, I know it is a creek because I could see it from the ridge. The other things shown around that ridge are about correct.

X Q. 32. How far is it from that State Ridge Line to the mouth of Tellico?

A. I don't know. I have been near the mouth of Tellico and at Tellico Plains and I have been back up the river.

X Q. 33. 40 miles?

A. Must be.

2080 X Q. 34. Is there anything to indicate that that is not somewhere close to the mouth of that stream the way that map is made there?

A. No.

X Q. 35. Nothing there to indicate what it is?

A. No.

X Q. 36. Have you been clear up to the head of Tellico under the McDaniel Bald?

A. No, I haven't. I have been at McDaniel Bald and Cold Spring Gap at the top of the ridge near Tellico.

X Q. 37. The line calling to run from the Cataloochee Turnpike to the Tennessee River at a distince of 65 miles and crossing the same and thence to the main ridge and running the extreme height of the same to the place called the Unicoy or Unaka Mountain and calling for a place over on the Unaka to be a 93 mile post or a 93 mile mark, could you go to that place without going this State Ridge line at 93 miles?

A. I really don't know.

X Q. 38. You didn't measure that?

A. No.

X Q. 39. No trouble to find the Unaka Turnpike, that is there where it is called for on the line?

A. Yes.

X Q. 40. Well from there to the Hiawassee River, did you measure that?

A. I have not.

X Q. 41. You don't know how those measurements tally out?

A. No.

X Q. 42. Now I want to ask you Mr. Williams if there is anything on this map or sketch, the commissioners having made a report that they filed their plats herewith, is there anything on there to indicate that they went around this loop here by the McDaniel Bald?

A. Taking the shape of the line and the angles on it of itself doesn't indicate that they did go around by McDaniel Bald.

X Q. 43. If that little prong of Tellico River had come up 2081 through here at the proper place and was cut through there, then that map would be just like North Carolina's contention that that thing lies, wouldn't it Mr. Williams?

A. Yes, if it showed Tellico River as crossing the line and it showed the etching in the proper way to correspond with that and taking the shape and the fact that it did run across the Tellico River it would approximately show the State Ridge and the Jenks Ridge line.

X Q. 44. Then if they run that line and crossed there and didn't show the Tellico River where they crossed that is another inaccuracy that they committed in mapping?

A. I don't know how that is.

X Q. 45. You don't know how they looked upon Tellico Creek at the place they crossed it at that time?

A. Of course not.

X Q. 46. So if you were to take the shape of that map, the measurements you find, the marked trees that are along there as your guide and say nothing about the divide of the waters, wouldn't you say that they took the State Ridge and the Jenks Ridge between Jenks Knob and Laurel Top?

A. I don't see any convincing marks on their line, but to take the shape of the line alone without anything else and it more nearly conforms to the contention of North Carolina.

X Q. 47. Well that connected with the measurements, would that convince you that they run that line rather than the other line if you would go by the measurements and the shape of the map they sketch here?

A. I really don't know what the measurements are.

X Q. 48. If it was six miles further across to that line than that line and the measurements showed that line, which one would it show that they measured?

A. Show that they went the shorter line if it corresponded more nearly with the measurements.

X Q. 49. Well now the commissioners make a certificate on this map and certify that it is correct, don't they—what do they say is correct there?

2082 A. It says: "Do hereby certify that the above is a true and correct plat of the dividing line between the said States as settled, run and marked by us."

X Q. 50. So they say that that is a plat of the line that they run and marked?

A. Yes.

January 6, 1911, at 5:15 P. M. the further taking of proof was adjourned to 7:30 P. M., January 6, 1911.

January 6, 1911, at 7:30 P. M., the further taking of proof was resumed, pursuant to adjournment.

Present (For North Carolina): C. B. Matthews, Esq.; Ben Posey, Esq. (Mr. W. R. Hopkins).

(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

Cross-examination continued by Mr. MATTHEWS on behalf of the complainant, State of North Carolina:

X Q. 51. Mr. Williams, I understood you to say that, or did I understand you to say that you would often look at the Hangover Ridge from Telassee—you said you were surveying in that part of the country?

A. I don't believe I did. I said that I had often looked at the Hangover Ridge from the L. & N. bridge across the Little Tennessee River and I had seen it from the vicinity of Telassee.

X Q. 52. And where is the L. & N. Railroad bridge?

A. It is just below the mouth of Tellico River.

2083 X Q. 53. And Tellico River runs into what?

A. Into the Tennessee River.

X Q. 54. Into the Tennessee River?

A. What we usually call the Little Tennessee River.

X Q. 55. That is to the West, is it, of the contention here?

A. Yes.

X Q. 56. And how far?

A. By the road from Vonore station, which is near the railroad bridge, we call it about 22 miles to the mouth of Telassee Creek.

X Q. 57. Now when you look in the direction of Hangover, do you see anything more than the peaks, the tops of the peaks?

A. I sometimes see all of the ridge at the Stratton Bald and from the Stratton Bald all the way to the Hangover. I did coming up here a week ago to-day.

X Q. 58. All the way to the Hangover?

A. Yes.

X Q. 59. Just what do you mean when you say to the Hangover—are you speaking of Hangover peak?

A. Yes.

X Q. 60. And about how far from the river is that?

A. I have never measured that distance, it is some four miles I suppose.

X Q. 61. About four miles?

A. Yes.

X Q. 62. Now you were on what—all together on two occasions you were about eleven days on those mountains and on this line on the two occasions in December and September?

A. Well not that many days in that vicinity.

X Q. 63. Well how many days were you in the vicinity, say between the Northern part of the line where you commenced and what is called the Junction?

A. Eight days in all.

X Q. 64. The other three or four days, whatever they were, were spent below there at about near the Citico Country?

A. Between the Junction and at and around the head of Tellico.

2084 X Q. 65. Now the time that you were on this line wouldn't have been sufficient if you had been going there to establish the line or to ascertain the line without any help, would it?

A. No.

X Q. 66. And how much of this line between the Junction and the Northern point where you commenced, which I understood was the 59th Mile Tree, did you actually survey yourself?

A. Well a little more than 5½ miles and that was all on the North side of the Tennessee River, and the other I only walked over and examined and hunted for marks.

X Q. 67. No part of it then from the Tennessee River South or Southwest to the Junction did you survey? I mean did you survey yourself?

A. No.

X Q. 68. I am right in saying that you commenced at the 59th Mile Tree?

A. Yes, pretty close to it.

X Q. 69. Well how close to it—you attempted to go right at it, didn't you?

A. A little more than 21 poles Northeast of the 59th Mile Tree where I began.

X Q. 70. How did you survey—did you have a transit instrument with you?

A. No, I used a compass.

X Q. 71. Where was Parsons Bald, or Parsons Knob—how far Northeast of that was Parsons Knob?

A. About a mile.

X Q. 72. Did you measure it?

A. No.

X Q. 73. That then is merely guessing?

A. Yes, I believe I said that it was something near a mile.

X Q. 74. And how did you sight—you say you sighted—you can't sight with a compass, can you?

A. Yes.

X Q. 75. That isn't the kind of sighting that you sight with, a transit instrument is it?

A. Not exactly, most compasses have what are called sight 2085 veins, while the transits have a telescope.

X Q. 76. And you sighted in a straight line from the point where you were standing to Parsons Bald?

A. That is from the point I have described and designated as Lone Pine from the North side of the Tennessee River.

X Q. 77. Well I am talking about your sighting—first Parsons Bald is further Northeast?

A. Yes.

X Q. 78. That is where your first sighting was taken, from the 59th Mile Tree to Parsons Bald?

A. No I didn't take any sight from the 59th Mile Tree to Parsons Bald.

X Q. 79. In your early part of your examination in chief you say you sighted in one direction, as I thought you said Northeast, and then you said you turned around and sighted on the same line to the Southwest. Now describe again exactly what you did in sighting these points?

A. I said from the sharp turn in the line on the North side of the Tennessee River, as shown on Exhibit 1 to the testimony of W. D. Hale, I sighted on a back sight to Parsons Bald.

X Q. 80. Was that from the Lone Pine then back to Parsons Bald?

A. Yes, and then without moving the instrument I sighted the other way to see where that line of sight would fall.

X Q. 81. And what was the angle which you discovered at which you were sighting when you were looking back at Parsons Bald or Parsons Knob, what ever it is?

A. The bearing from that point to Parsons Bald, as I have it noted in North 42½ degrees East.

X Q. 82. And coming down the other way the 42½ degrees would be South 42½ West?

A. Yes.

X Q. 83. And you sighted the same angle then without moving the instrument, sighting across the river?

A. I sighted on an angle South 42½ West.

X Q. 84. Is that point from which you did that sighting —
2086 you said it was the Lone Pine I believe?

A. Yes.

X Q. 85. Is that the same, or is it in the vicinity of the location of the 64th Mile Tree, mile circle, I mean?

A. I have no note showing the 64th Mile Tree, because I didn't find the 64th Mile Tree, and while I was shown about where it was said to be I made no note of it because it was indefinite. I could by taking my notes tell approximately about whether that was the place for the 64th Mile Tree, and from recollection I would say it was near the 64th Mile Tree.

X Q. 86. And about how far from the Tennessee River—about how far Northeast of the Tennessee River at the point where you say that it crossed to the Hangover?

A. It was about a half mile from the river—I can give you the exact distance if you like.

X Q. 87. Well I would like to have it?

A. I find on calculating that it is further than I thought it was, it is nearly three-quarters of a mile, being 235 2-5 poles from the Lone Pine to the bank of the river.

X Q. 88. And about three quarters of a mile?

A. Yes, that is nearly three quarters of a mile.

X Q. 89. You made the measurement from where you commenced 55 100—I mean 5 51 100 miles, did you not, to the Tennessee River?

A. Not from the place I commenced, but from the 59th Mile Tree.

X Q. 90. Did you make those measurements yourself?

A. No sir.

X Q. 91. From what did you take them?

A. I took them from the distances called by the chain men and I watched the instrument men and took the bearings from the compass myself and then I watched the chainmen as close as I could.

X Q. 92. But the measurement was made under your supervision?

A. Yes.

X Q. 93. Now did you follow the meanderings of the line, or did you measure it in a straight line?

2087 A. We followed the course—we followed the crest of the ridge closely but not exactly—some of the bends were cut off.

X Q. 94. Do those figures agree with what Mr. Hale had made them, or disagree?

A. They disagree with the measurement I heard him testify about.

X Q. 95. To what extent in both cases, please?

A. I believe the measurement I have differs from the measurement he gave 12 100 of a mile. As I remember he gave it 5 63/100.

X Q. 96. When you projected your line on that same angle which you had sighted as you say a while ago or said a while ago, I understood you to say that that line struck to the right of the Hangover Ridge and to the left of the Big Fodder Stack. Is that correct?

A. Yes.

X Q. 97. How far to the right of the Hangover did it strike and where did you end it?

A. The bearing as I have said when prolonged to the Southwest was South 12½ degrees West. The bearing to Hangover was South 14½ West, making an angle or a difference in course of 28 degrees.

X Q. 98. What objects did you sight with—what objects did you sight on the Southern side of the river—where did it strike—what did you hit?

A. I didn't make a note of what point it struck on the Fodder Stack Ridge, but I remember that it was somewhere in the vicinity of Rock Stack.

X Q. 99. Now describe just where Rock Stack is, please?

A. Well I can't do so definitely. It is to the Southwest of Fodder Stack, but I don't know the distance.

X Q. 100. Is it on the Big Fodder Stack range?

A. Yes.

X Q. 101. And is it Southeast of the spur that runs up from the Slick Rock Creek to the Big Fodder Stack?

A. Well I don't remember that I ever saw or knew anything about the spur from the North side of the river.

2088 X Q. 102. You never surveyed that spur?

A. No.

X Q. 103. You never surveyed that through?

A. No.

X Q. 104. Now in striking the Rock Stack isn't it a fact that you were nearer the Big Stack than the Rock Stack?

A. No sir.

X Q. 105. Did you strike between them or did you strike Rock Stack, the summit of it?

A. As I remember it now it was very near the top of Rock Stack.

X Q. 106. Can you tell me by measurement about how far that is from the Big Fodder Stack?

A. No, I can not because I have not measured the distances on that ridge.

X Q. 107. But it is nearer the Tennessee River is it not than the Big Fodder Stack?

A. The Rock Stack?

X Q. 108. Yes sir.

A. No, I don't think it is.

X Q. 109. It is on that spur then or about three miles where you spoke of its bearing arbitrarily to the left if you were going out to the Big Fodder Stack?

A. It is on the Fodder Stack Ridge between the Big Fodder Stack and the Junction.

X Q. 110. How near which end of that line is it?

A. Well I think the Rock Stack is closer to the Fodder Stack than it is to the Junction.

X Q. 111. And is it a high peak?

A. Well it looks to be about as high and as prominent as Fodder Stack does from the North side of the river.

X Q. 112. Now in getting your line over there wouldn't you have to cross the Slick Rock Creek?

A. Well I couldn't say, but I think so.

2089 X Q. 113. Now at the point where you would strike, or you think you would strike the Slick Rock Creek, about how far was it from the Hangover?

A. I can't do more than approximate any of those distances, because I have not measured them. It would simply be a guess.

X Q. 114. Can't you locate them on one of these maps, say Hale's map, and calculate where it would be and about what point, if it crossed the Slick Rock, it would cross?

A. I notice the map which Mr. Burns has made shows Rock Stack, and is apparently nearly one third of the way from Fodder Stack to the Junction.

X Q. 115. And can you tell now whether it would cross the Slick Rock Creek, any part of it?

A. As shown by both the map made by Mr. Burns and the one filed as Exhibit No. 1 to W. D. Hale's testimony it would.

X Q. 116. Well, at that point, could you calculate on this map roughly—on Hale's map say—calculate roughly, or measure it off and see by a scale how far that would be from the Hangover, and how far from the Fodder Stack Ridge? Give us both of them.

A. That line of sight when projected on Mr. Burns' map appears to pass about 13,500 feet from Hangover and about 1,000 feet from Fodder Stack, that is taking the point where he turned on to the Fodder Stack Ridge from the spur.

X Q. 117. Well how far from the State line is that point on the map on the same line that you have projected over there—how far from the State Line as projected on that map as claimed by North Carolina does it strike from the nearest point?

A. Seems to be within 600 or 700 feet.

X Q. 118. Now can't you locate on Mr. Hale's map, taking Mr. Burns' map as a guide, the Rock Stake and give us the same measurements, because I think his angle corresponds more clearly to yours—42½—you said it was. Try and locate Rock Stack on Mr. Hale's map and give us the measurements from his map?

A. Of course I can't locate the Rock Stack on Mr. Hale's map with any degree of accuracy because it is not shown, because I

2090 have not been on Rock Stack and don't know the lay of the ground there, but taking the point where appears to be Rock Stack on his map, I find that the line of sight which I have described appears to fall much further to the East of the Slick Rock line than it does on Mr. Burns' map, being nearly a half a mile away at the nearest point from the line.

X Q. 119. From what line?

A. The Slick Rock Line.

X Q. 120. About a half mile from the Slick Rock Line, and how far from the Hangover?

A. Appears to be about two miles and a half.

X Q. 121. Now the direction of that line is going continually away from Hangover, isn't it? That is, further along it would be still further away, wouldn't it?

A. Yes, it would get further away going in either direction from the point I measured from.

X Q. 122. I wish you would take this map of 1821, Mr. Williams, and look at that line that stretch that has been called the straight mile or straight line where it crosses the Tennessee River according to that map and see if you can determine how far Northeast that point is from the river—that particular line?

A. I have two or three times scaled that line on the 1821 original plat and I find that the river takes up a small fraction over half a mile of that mile apparently. That is, it doesn't appear by the scale of that map that it is quite a mile from one circle to the other and that the river covers a little more than a half of the distance between those circles.

X Q. 123. I am asking if you can determine from that map or any of these maps that point from the river—I want to determine how far in fact it is from the river front—is that point there the same as the Lone Pine?

A. I couldn't say.

X Q. 124. Can you determine whether it is then?

A. No.

X Q. 125. At what distance from the river?

2091 A. No. I can determine by a scale.

X Q. 126. Very well, please do that?

A. If I had a scale. From the first mile circle North of the Tennessee River to the North bank of the river as shown on the original plat of 1821 is as near as I can scale it with instruments at hand 136 poles or 2243 feet.

X Q. 127. In fact as the river is there in fact it is more than a thousand feet more than that, isn't it?

A. Yes.

X Q. 128. To the true center of the river, or to the true bank of the river?

A. Yes.

X Q. 129. Now then can you say where that Northeastern point of that straight line is, or can you scale it or get at it in any way with reference to the river as it is?

A. Yes, I can by assuming two or three things—by assuming that the measurement of the river as given by others is correct.

X Q. 130. The actual measurement of the river—that is what I want you to do?

A. Taking my own scale for the width of the river is 2904 feet and substracting the distance across the river as given by Mr. Hale and substracting that from the total width of the river and dividing the remainder by 2, assuming that the river has spread on either side

of its true location would give 1170 feet to be added to the 2240 feet would give 3414 feet as the probable distance from the mile circle to the bank of the river.

X Q. 131. About two-thirds of a mile then?

A. Yes, approximately.

X Q. 132. Now as you stand at that Hemlock tree on which hand is Slick Rock Creek?

A. To the right.

X Q. 133. And on which hand is Cheoah?

A. To the left.

2092 X Q. 134. How far is the Cheoah from that point, if you know?

A. I don't know the distance either to Cheoah or Slick Rock.

X Q. 135. Well Slick Rock is in a Westerly direction, is it not?

A. Yes.

X Q. 136. And Cheoah is Easterly?

A. Yes.

X Q. 137. Then if you were going on an angle and a line with a Southeastern trend—Southwestern trend I mean, if you reached any stream at all in that locality you would reach Slick Rock and could never reach Cheoah?

A. Not from the Hemlock.

X Q. 138. Well you would if you reached any stream in that immediate neighborhood you would reach Slick Rock?

A. Running Southwest, yes.

X Q. 139. And you could never reach Cheoah, which is on the Southeast?

A. No.

X Q. 140. And now assuming that you had reached—assuming for the sake of argument that you had reached with the line the South bank of the Tennessee River at the mouth of Slick Rock Creek and went for about six miles South 44¼ degrees West, state what point you would reach?

A. I don't know just what point it would reach.

X Q. 141. Can't you scale it, take Mr. Hale's map or either of those maps. Take it 42 degrees instead of 44.

A. I have not the instruments with which I can do that with any degree of accuracy.

X Q. 142. Then just project a line South 44 degrees West and see what ridge it hits and where—can't you do that there with what you have got—your protractor and scale?

A. No, I haven't anything with which to get a meridian there with which to measure the angle. A line drawn South 44¼ degrees West on Exhibit No. 1 to W. D. Hale's testimony from the mouth of Slick Rock Creek would hit very near the top of Big Fodder Stack.

2093 X Q. 143. Hit right on to it, wouldn't it, or a mile East of it?

A. Hit on the Big Fodder Stack and very near the main top I take it.

X Q. 144. Now suppose you had a line from there for three miles running South 20 degrees East, just give us where that would hit?

A. It would hit the junction of Fodder Stack Ridge with the Hangover Ridge.

X Q. 145. Now I understand you to say that the line as shown by the State Line Map of 1821 seems to leave the creek as it goes down Southwest. You answered that I believe to a question in your examination in chief?

A. Yes.

X Q. 146. I will ask you if any attempt was made to sketch the whole topography of that country as well as run the line surveyed and measured, how much time would you allot to that to get the whole topography correct—I mean run the whole line now—the same way you answered the question in your examination in chief with reference to running the line yourself?

A. Well, if I was doing it and when I was surveying on it I did note the crossing of any trails, the head of the leading ridges and the gaps and the high points giving their names if I knew them and taking the elevations of the knobs and the gaps, but I never try to sketch very far away from the line. I sometimes take bearings and do sketching for two miles away from the line.

X Q. 147. Why do you say then that this map ought to have shown Cheoah and its tributaries as a matter of topography—they have nothing to do with the State Line as claimed by either party, have they?

A. I said that because they had undertaken to show things 20 miles away and Cheoah was apparently something like a mile from the Hemlock on the North bank of the river.

X Q. 148. That was its mouth only?

A. Yes.

X Q. 149. But I understood that your answer was with reference to what any good surveyor would do?

A. Well I said any good surveyor in following a stream would note it if he followed it.

2094 X Q. 150. But he would note the stream where the line followed or crossed it?

A. Yes.

X Q. 151. But if he didn't follow it or crossed it I understood you to say you would confine yourself pretty closely to the line leaving out what these commissioners did in 1821—do you mean that any good surveyor would have depicted the Cheoah and its tributaries on there although they had nothing to do with the State Line?

A. I am not sure that they don't show Cheoah on this map, but inasmuch as they did show things so far away from the river, I can't see why they wouldn't show both Cheoah and Slick Rock Creek, and granting that they followed Slick Rock Creek for five miles, I can't understand why they shouldn't show it in their notes and on the plat, and if they did show it I can't understand why they did show it as being along the creek for one mile.

X Q. 152. I asked you the question Mr. Williams not what these commissioners of 1821 did. What would a surveyor, an ordinary surveyor, and what would you have done with reference to platting Cheoah River and its tributaries when none of them had anything to do with the State Line?

A. I don't know whether I would have shown them at all.

X Q. 153. Your answer was, I believe, that you would keep pretty close to the line you were surveying?

A. I usually sketch prominent points within a mile of the line if I am running through the country and sometimes two miles away from the line if I am taking bearings from high points.

X Q. 154. And you say you pay attention to streams and prominent objects that are close to where your line calls to run?

A. Yes.

X Q. 155. And isn't it a fact that in surveys of this kind they are not intended to be accurate topographic maps, are they?

A. No, I would not think so.

X Q. 156. You are pretty familiar with the Ocoee Land Districts are you not, that are on file at Cleveland, Tennessee, I believe?

2095 A. No, I am not familiar with those maps, I have seen them, looked at them some.

X Q. 157. But don't you know that while the most of them—that while on most of them the lines are pretty accurate, that the topographic features are merely sketched in and are often inaccurate?

A. From what I have seen of them I should say that only a small portion of the topography is shown on them at all, and some of which is pretty accurate and part of which is inaccurate.

X Q. 158. Well the accurate parts, aren't they present only when they concern the location of a line or on or nearby the line?

A. No, I think the accurate parts of them are where they crossed them or ran lines to the streams.

X Q. 159. That is, the topographic features in that case or in those cases are supposed to be surveyed and accurately depicted?

A. Yes.

X Q. 160. In other cases they are always sketched in, are they not?

A. Both points where they are measured to I suppose they were. I don't suppose they ever made a traverse of any of those streams during any of those surveys.

X Q. 161. If that stream marked "Creek" on that map of 1821 is Slick Rock you know, don't you, that it is inaccurately located?

A. Yes.

X Q. 162. How about the mouth of it—is the mouth of it accurately located?

A. Well I can't say whether it is or not, taking the known point on the State Line at the Hemlock tree I should say it is not, if that be Slick Rock Creek.

X Q. 163. Well now from the Hemlock tree and from the point at the river, the Tennessee River, that you reached when you say

you got over the Hangover, isn't the mouth of Slick Rock about one-half a mile away?

A. I think so. I have only walked it.

X Q. 164. Down the Tennessee River?

2096 A. I have only walked over the distance down there and I have not measured it, but it appears to be something like a half a mile.

X Q. 165. Wouldn't it appear on all of these maps that the mouth of that stream, marked "Creek" is about a half a mile from that point where you reached the Tennessee River at down the stream?

A. No, I think not. Of course it is difficult to say what does appear or what happened with the river shown as more than a half a mile wide.

X Q. 166. I am leaving the width of the river out now, but taking the North bank of the river, and ask you if it isn't about a half a mile to where the mouth of Slick Rock Creek is?

A. The stream shown as "Creek" at the mouth seems to be almost exactly opposite where the State Line strikes the North side of the river.

X Q. 167. The scale on that map is very small, isn't it?

A. Yes.

X Q. 168. Suppose you take Mr. Burns' map there—just turn that over please and look at Mr. Burns' map and see if it doesn't appear to be about a half a mile down the Tennessee River from the point where you crossed the Tennessee to go to Hangover?

A. Yes, it appears to be about a half mile.

X Q. 169. Now in that locality, there isn't any other stream that comes into the Tennessee other than the Slick Rock—I am asking now from your knowledge of the ground?

A. No, I know of no other stream coming in that close below the State Line.

X Q. 170. You know of any other stream running into the Tennessee between that and Cheoah?

A. Yes, I know there is a small stream.

X Q. 171. Whereabouts is that?

A. I don't remember.—I don't remember much about its location except to remember it is between the mouth of Cheoah and where we crossed the Tennessee River on the line.

X Q. 172. Isn't it simply a dry bed, except in time of flood?

2097 A. No, there was water running there when I was there. As to what it might be in the dryest time I don't know, but it appeared to be a continuous branch.

X Q. 173. Has it any name?

A. I think I have heard it called the Gold Mine Branch, but I am not sure of it.

X Q. 174. Gold Mine Branch of what?

A. I suppose you would call it a branch of the Tennessee River. That is simply——

X Q. 175. (Interrupting.) Does the Tennessee run into it, or it into the Tennessee?

A. It runs into the Tennessee River sir.

X Q. 176. Now I understand you to say or that you said that the main ridge goes down to the mouth of Slick Rock?

A. The main spur of the Hangover Ridge goes over to the mouth of Slick Rock.

X Q. 177. And you added to that that the Hangover was not the main ridge. Is that right?

A. I don't remember of making such a statement.

X Q. 178. I will ask you where you designate the Hangover Ridge as commencing near the Tennessee River—I mean in that direction going South crossing the Tennessee River where you took your line across, where does the Hangover Ridge or Hangover main ridge commence?

A. Well the ridge itself begins close up to the mouth of Slick Rock Creek and I wouldn't know just to say where it did begin to be the main ridge, but it begins to be higher than anything about it or to the West of it before reaching the Hangover, but the main ridge, that is the highest ridge, after they fork and leave each other is the ridge I think running off toward the Cheoah River, that is to the Northeast of Hangover, or rather to the North of Hangover, is lower than the ridge going off towards Cheoah River from Hao.

X Q. 179. Where does that declination commence and how rapidly does it run down?

2998 A. It begins at the Hangover and descends rapidly for a considerable distance and then descends more generally for a time and at other places descends pretty fast and at some places rises again.

X Q. 180. How far is the Hangover—when you say Hangover, you mean the peak I suppose?

A. Yes.

X Q. 181. You say that is about four miles according to your recollection from the river?

A. Just estimating it.

X Q. 182. Now just across from the Hemlock that you speak of is a bluff, isn't there?

A. Yes.

X Q. 183. About how high is that?

A. Well it is rocky and steep all the way from the South bank of the river to the top of that Hangover Ridge which runs down to the mouth of Slick Rock Creek and the total rise is something like 900 feet.

X Q. 184. Now take that point that runs down where you say it turns and runs down and forms a sort of elbow, where it runs down to the Slick Rock Creek.

A. The general direction of the Hangover Lead is pretty much the same on down to the mouth of the Slick Rock Creek as I could tell. I didn't follow it from where we went up from the bluffs down the creek.

X Q. 185. Is there a circling around or an elbow of some kind, a turn in it, or does it all from Hangover peak trend in a pretty straight line towards the mouth of Slick Rock?

A. It winds and circles some, but the general direction is pretty straight.

X Q. 186. Now I want—now what I want to get at Mr. Williams—suppose you were on top of that bluff on the other side of the river and wanted to reach the Hangover, give a little detail of what you would first come to or what nature of a ridge or country would you strike if you were going down in that direction and wanted to reach the Hangover Ridge—what is the topography of that immediate part of the country South of the Tennessee River?

2099 A. Well on that face of the Hangover Ridge on the South side of the Tennessee River it is very steep and rough so far as I could see all along.

X Q. 187. For how far?

A. Apparently for a mile.

X Q. 188. Would you be going up gradually or down and up alternating?

A. I didn't get through answering your former question. There is a number of spurs and hills running off from that Hangover Ridge, and none of which are very prominent or much above the hollows and that high face along there has pretty much the same appearance from the North side of the river and the ridges don't extend out prominent at all that are running down from the Hangover Ridge to the river and that Hangover Ridge appears to be high and steep from the North side of the river.

X Q. 189. Well when you are on the North side of the river, say three quarters of a mile or a mile back on the State Line, don't you look down on to this bluff that is right at the South bank of the river?

A. Well you see down to that face of the mountain there and get an idea of how steep it is. I don't remember that you can see any bluffs.

X Q. 190. Well where you go to the first point on the State Line going in that direction at which you can see that bluff, aren't you looking down on it and isn't it lower than you are on the point on the North side?

A. There is so many points and for so much of the distance that you can look down there I don't remember about the first points. There are some points along there and you are looking down some.

X Q. 191. Looking down some?

A. Looking down considerably.

X Q. 192. Looking down considerably, you say?

A. Yes.

X Q. 193. Taking the last rise Northwest above the river ain't you looking down to the river from that point?

A. Well it depends in a great measure what you call a "bluff." That is all a steep mountain side from the top of the Hangover Ridge down to the South bank of the river and it is all rocky, but there is no part of it that is very much worse than the other parts. I

2100 remember one place about half way up the mountain that was more difficult to get over than at other places along the side of the mountain. Taking that difficult place half way up and

then from that last spur off on the North side of the river it would be looking down, but it wouldn't be looking down from that face of the mountain.

X Q. 194. What I am trying to get at—you said that bluff right at the river on the South side was about 900 feet high. Do you know anything about the elevations on the line North of the river? I want to know if there are any points in that 5 miles an- 51/100 that are much more elevated than that 900 feet of bluff?

A. In one of my answers to-day I gave the elevation at a point 1,047 feet above the North bank of the Tennessee River. Referring to my notes I find that that was 625 feet above the river. Going back a considerable distance from that, about 38 poles back of that point which was 1,675 or 625 feet above the river I have an elevation of 1,830 feet noted which would be 780 feet higher than the river. Going back 3,600 feet Northeast from the North bank of the Tennessee River I find the elevation to be 1,220 feet above the river. Now in answer to the last part of your question I have several points back to the Northeast back of that and between that and the 59th Mile Tree which is more than 3,000 feet above the river.

X Q. 195. Can you give it quickly, the one at the Lone Pine?

A. 1,320 feet above the river.

X Q. 196. Mr. Williams, did you ever observe closely the Big Fodder Stack and that ridge leading up to it from Slick Rock Creek with reference to its elevation and particularly its average elevation?

A. You are speaking of the ridge from Little Fodder Stack to Big Fodder Stack?

X Q. 197. I am speaking of the ridge from the Slick Rock Creek up to the Big Fodder Stack and from there on to the Big Fodder Stack itself.

A. No, I have never in any way, and I have never been on it.

X Q. 198. The Little Fodder Stack runs to the river, does it not?

A. The lead which it is on runs to the river.

X Q. 199. Isn't it a fact that the Big and Little Fodder Stack are less broken up with peaks and gaps than the Hangover?

2101 A. No, I think not. I have not been over all of it. I have been from the junction down the Fodder Stack Ridge as far as Glen Gap and I have been from the Fodder Stack to the Little Fodder Stack along the top of the mountain.

X Q. 200. Have you observed them sufficiently to say whether or not they do not keep up their average height better than the Hangover?

A. From all the observations I have had I don't think they do.

X Q. 201. Did you ever observe them with reference to that having that in your mind, as to whether or not the average was better elevation than the Hangover?

A. Well I did some while going over the Hangover Ridge and looking at the Fodder Stack from there, but I didn't when going from the Big Fodder Stack to the Little Fodder Stack, because at that time I had no interest in the matter in any way and was not employed in any way in connection with it and didn't care anything

about it. I do remember about some of the points along the mountain.

X Q. 202. Can you say whether or not then the average is kept up better?

A. I can't say positively, no.

X Q. 203. Now is not the ridge just West of Slick Rock Creek leading up to the Little Fodder Stack nearly a thousand feet higher within a half of a mile than the ridge leading to Hangover?

A. I don't know, because I haven't taken any heights on that ridge West of Slick Rock Creek.

X Q. 204. You couldn't tell from observation then whether it is some higher without speculating?

A. I know that it is some higher than the Hangover Ridge near the river.

X Q. 205. When you say "near the river" do you mean from Hangover peak down to the river?

A. No sir.

X Q. 206. How near the river then do you mean?

A. Well any point within a mile or a mile and a half on the Hangover Ridge I think is lower than that ridge to the West of the mouth of Slick Rock Creek.

2102 X Q. 207. Now I wish you would look on the map of Mr. Burns and look at the Cheoah River as he has platted it and also look at Slick Rock Creek and the Hangover Ridge. Now I will ask you if the general trend of the Cheoah River is not almost, if not quite, at right angles to both of those?

A. The Cheoah River appears to be at about right angles to Slick Rock Creek.

X Q. 208. And how with Hangover?

A. The general direction of Cheoah River seems to make an angle of about 62 or 63 degrees with the general direction of the Hangover Ridge.

X Q. 209. And in its course its going further away from both the Hangover Ridge and Slick Rock all the time?

A. Yes.

X Q. 210. And there is no point nearer the State Line as you run it than its mouth is there?

A. No.

X Q. 211. How far along the face of the river does that bluff extend that is across from the Hemlock tree?

A. I don't know.

X Q. 212. It does extend a considerable distance on either side of the point where you crossed?

A. Yes, that steep face of the mountain extended from Slick Rock Creek as far up the river as I could see from the Hemlock, and I was up the South bank of the Tennessee River to Cheoah, and it was pretty much the same up to the mouth of the river.

X Q. 213. And how down towards Slick Rock?

A. I said it extended from the mouth of Slick Rock towards the Cheoah.

X Q. 214. About one height, or does it slope off?

A. That is the bluff or the face of the mountain gets lower towards Slick Rock Creek.

X Q. 215. You said that the shape of the line on the map of 1821 more nearly corresponded with the Slick Rock line but every thing else corresponds more nearly with Hangover. Now what do
2103 you mean by "e-ry thing else"?

A. Well I mean the mountains shown on the map and the line shown as following the mountain and the fact that there is no ridge shown on the map for the Hangover Ridge, unless it is the one which the line follows.

X Q. 216. The fact that you had formerly—I mean the fact that you had from your observation there made up your mind that the Hangover was the main ridge was the controlling factor in your mind, was it not?

A. No I don't think it was. It was one of the controlling factors.

X Q. 217. And what was the other, if there was more than one controlling factor?

A. The line of sight taken back to Parsons Bald and then prolonged to the Southwest was another.

X Q. 218. Any other?

A. Yes they were going down to the river at the Hemlock and the Hangover Ridge being right in their face at that point, and they are calling for the main ridge, you may figure that inasmuch as that ridge was right before them there that that would be the ridge they would take, having come down to the river at that point.

X Q. 219. Now if by the Hangover Route from the Hemlock you reached the Junction by a first line to Hangover South 8 degrees West and from there to the Junction South 60 degrees West you never could reach the Junction by a line South 44¼ degrees West for 6 miles and then a line South 20 degrees East, could you, starting from the same point?

A. Well I don't know, because I never tried either.

X Q. 220. You have learned Mr. Williams in inspecting the Hale Exhibit No. 1 and the Burns Exhibit, complainant's exhibit "D" that the sketching of that stream marked "Creek," if it be Slick Rock Creek on the map of 1821 is incorrect, is it not?

A. Yes. I also learned it from observation on the ground.

X Q. 221. Now on that ridge, the Big Fodder Stack, and especially on that three miles from where it turns to the left, did you ever look for State Line marks?

A. Very little. At the time I went down the Fodder
2104 Stack to Glen Gap I did look some, but not much.

X Q. 222. But did you find any when you did look?

A. I never found any.

X Q. 223. Are you willing to say there are none there?

A. No sir.

X Q. 224. Mr. Williams, I want to call your attention to some measurements North of the 59th Mile Circle that you gave. You gave three courses there and distances. Have you got them before you?

A. I have.

X Q. 225. One was South 63 West 8 3/5 poles. 8 3/5 poles are 142½ feet, aren't they?

A. To be exact about it is is 141 9/10.

X Q. 226. 8 times 16½ is how much?

A. 132.

X Q. 227. And 3/5 of 16½ would be 10½?

A. I suggest you multiply 16 5/10 by 8 6/10.

X Q. 228. 16 5/10 by 8 6/10—now that then—that scale of that map of 1821 is 800 poles to the inch, isn't it?

A. I believe so, yes.

X Q. 229. That is 13,200 feet I make it?

A. Yes.

X Q. 230. On that scale there is a little fraction, but I make it that that course and distance would be 1/90th of an inch long. Is that right about—there is a fraction over.

A. I don't know whether I could ever arrive at the fraction you have there or not.

X Q. 231. Well just ignore the fraction—I call it 1/90th?

A. Yes, it is nearly that, about one hundred and seven tenths thousands. That is decimally it is near .0107 of an inch.

X Q. 232. And the next one is 4 4/5 poles. I will ask you if that isn't about 1.165 of an inch?

A. Do you want me to calculate it?

2105 X Q. 233. I just want to know Mr. Williams whether or not it would be possible to decipher such infinitesimal distances as these where there was a change of angle?

A. No, it could not be shown on the map.

X Q. 234. And it would have to be represented and any ordinary surveyor would represent them as a straight line, would he not?

A. He would have to do that or something else on that scale of 800 poles to the inch, because he could not show those lines.

X Q. 235. The next one is South 45¾ West 7 18/25 poles to the 59th Mile Tree. That is a little smaller than the first and some larger than the second, but they are very small, and I take it could not be platted with changes of angles?

A. No, the three courses if added together would only make about three one hundredths of an inch and that could not be shown.

X Q. 236. Now you have stated assuming that the line crossed Slick Rock Creek, you added by way of parenthesis, "that it didn't"—that the whole line would be wrong. Do you mean any more by that than if you crossed at any point, which is not the correct point, that the whole line as platted would be wrong?

A. I think I said which if it didn't would by scaling angles and distances from the original map would all be wrong after taking a wrong assumption of that kind of any other line.

X Q. 237. That would be true as to any line if you drew one line wrong, but nevertheless taking the courses and distances of that line that error would creep through the whole thing?

A. Yes, if continued through the whole of the plat.

X Q. 238. That would be corrected however when you got to

some mountain or some object that you knew was on the right line and you made a new start from there?

A. Yes, that would be customary to do that of course.

X Q. 239. Isn't it a fact, Mr. Williams, that if you took the line by Hangover—if you take the line by Hangover and assume that as the correct line, that the following of any stream for any distance would be utterly irreconcilable with it?

2106 A. So far as I know it would.

X Q. 240. Mr. Williams, if these commissioners had gone up the Hangover, could they have seen the Slick Rock Creek off to their right?

A. I don't remember a point any where over on the Hangover divide from which Slick Rock can be seen but the basin can be seen all or nearly all the way along the Hangover divide.

X Q. 241. Indicating a stream of some kind there?

A. Yes.

X Q. 242. Now wouldn't the same reason that you gave why they should have platted the Cheoah River then apply to the platting of the Slick Rock Creek, inasmuch as they have put in, as you say, so many things that didn't concern the State Line, and which were at a distance from it. Could you see why they wouldn't plat on their map the Slick Rock Creek?

A. The only difference, about the only difference I believe is that after going up on the Hangover and from there over the Stratton Bald and following the top of the Hangover Ridge, the Fodder Stack divide putting off from the mountain doesn't show well enough that they could very readily tell where that divide leaves the mountain from any point that I remember from Hangover to the Junction.

X Q. 243. But you say they would know from the gulch or cup there that there was a stream of some kind?

A. Yes, they would know in going up the Hangover Ridge until they reached the Hangover that there was a basin off to their right.

X Q. 244. Is there within your knowledge from the Cataloochee Turnpike to the Georgia Line any other stream that runs for so long a distance or so short a distance or so close to the State Line as Slick Rock Creek?

A. I know nothing of the State Line from the Cataloochee Turnpike to about Parsons Bald, and of course would not know about the streams along that part of the line, and I don't believe I know of any stream for an equal distance running so near the State Line as Slick Rock does assuming that it is either on the Hangover Ridge or on Slick Rock Creek.

X Q. 245. Where is there any other stream that runs for any distance along with or by the side of the State Line on the part of the line that you know?

2107 A. There is one stream, one head of which is very near the Tennessee River that runs to the Southwest for a considerable distance near to the State Line. I remember a road goes down that stream from the gap of the mountain and in going back from the

river back from the Turnpike we went down out of a gap to the road a short distance, the road being on the stream.

X Q. 246. What is the name of that stream?

A. I don't know the local name of it that I ever knew.

X Q. 247. It is a little insignificant stream that runs for about two miles?

A. I don't know the length of it, but it must be longer than that.

X Q. 248. It runs about two miles along the State Line or near it?

A. I don't remember the distance, but not over two miles, but probably not quite so far.

X Q. 249. And so insignificant that you don't know whether it has a name at all or not?

A. I think it has, but I don't recollect it.

January 6, 1911, adjourned at 10:00 P. M., to 9:00 o'clock A. M., January 7, 1911.

January 7, 1911, at 9:00 A. M., the further taking of proof was resumed, pursuant to adjournment.

Present:

(For North Carolina): C. B. Matthews, Esq. Ben Posey Esq. (Mr. W. R. Hopkins).

(For Tennessee): Charles T. Cates Jr. Attorney General of Tennessee; T. E. H. McCroskey Esq.

2108 JOHN L. WILLIAMS resuming the stand for further examination deposed and said:

Cross-examination continued by Mr. Matthews on behalf of the Complainant State of North Carolina:

X Q. 250. Mr. Williams that South line on that map of 1821 from the Unaka Turnpike down to the end of the line which is platted as a straight line. Is that an undisputed part of the State Line?

A. So far as I know it is now.

X Q. 251. You have never heard of any dispute there?

A. Yes I know by the history and tradition of that locality that some parties thought from the river—I mean thought from the report of the call of the commissioners that the line run up the river itself instead of across the bends and I have always understood that there was two different law suits begun over the line.

X Q. 252. So far as you know now it is undisputed?

A. Yes.

X Q. 253. And yet there is a crest of the mountains that runs from that Unaka Turnpike down towards the Georgia Line?

A. Yes the Unaka Mountain itself runs on down to Hiawassee River and breaks off at the river at a station on the L. & N. Railroad known as McFarland, then almost exactly opposite that is the lead of the Little Frog Mountain extending on to the South and Southwest from opposite the end of the Unicoy or Unaka mountain. Then one lead of the Little Frog goes on to the Ocoee River almost the same general direction and the lead of the Big Frog

Mountain comes down pretty near that. Except for the two breaks at the two rivers the mountain is continuous.

X Q. 254. But this straight line does not follow that crossing, does it?

A. No sir.

X Q. 255. And does it not cross one or two little streams, I mean that straight line?

A. It crosses one or more of the head branches of Brush
2109 Creek on the North side of the Hiawassee River. Just what size they are at the crossing of the State Line I don't know, but I have been on these branches there so near the State Line that I am sure one of them crosses the State Line and then there is probably as many as two or three little branches South of the last mountain shown on the line, one or more of the head branches of Potato Creek, but all the streams that it does cross that are not shown on the map are very small ones.

X Q. 256. They are not mentioned in the report, are they?

A. No.

X Q. 257. And the creek just South of the Hiawassee River is not mentioned either in the report?

A. No.

X Q. 258. Now you recollect the Cession Act of 1789. I will just call your attention to it in the answer and cross bill of the State of Tennessee on page 2 and the last words of that they read as if that followed the crest of the mountain does it not clear down to the end of the dividing line?

A. Yes.

X Q. 259. And yet you say when they made that straight line they did not follow any crest of the main mountain?

A. No.

X Q. 260. I asked you last evening if you had searched for a marked line on that three miles that turned to the left—you know from Fodder Stack to the Junction?

A. Yes, I remember.

X Q. 261. And you gave an answer to that—between the Fodder Stack and along the Fodder Stack range and down that spur to the Slick Rock Creek did you ever search for any marked trees?

A. No, I have never been on that spur.

X Q. 262. Now I will ask you if you had that map of 1821 with the indications on it that you mentioned in your examination in chief and cross examination last evening and also found a marked line, a well marked line, up Slick Rock Creek and up that spur that I speak of to the Big Fodder Stack and along the Big Fodder
2110 Stack to the Junction, would the fact of those marks being there and an inability to find any marks or any State Line marks on the Hangover, would the marking be a controlling factor to your mind or a factor of any weight in connection with the map where the commissioners' report said that they had laid out and marked the line?

A. Under the conditions which you mentioned it would be a controlling factor and an indication, a strong indication, that they had run the line in that way.

X Q. 263. Now Mr. Williams, I want to call your attention to some words in the written report of the commissioners. First, I want to ask you that at the end of the 65 miles, which is spoken of from the beginning. That landed you on the South side of the Tennessee River, did it not?

A. Yes.

X Q. 264. From the reading where it says crossing the Tennessee River at a distance of 65 miles?

A. Yes.

X Q. 265. Now I want to call your attention to these words: "from Tennessee River to the main ridge". Now as a surveyor would that not indicate to you that when you got across the Tennessee River you were not on the ridge but that you had to go from the Tennessee River to the ridge?

A. Yes, certainly.

X Q. 266. Now you have testified to the liability to err on the part of surveyors. It's common knowledge, I suppose, that any man may err as well as surveyors, and that surveyors may err in any part of the survey or platting it. That is true, is it?

A. Yes.

X Q. 267. And it is true that in making marks surveyors may err. Is that a fact?

A. I suppose it is at times. I have seen trees that were marked off off of straight lines, that is where the instrument would be set on a ridge top and the rod set on the next ridge top and the instrument moved from one point to another point across a man might get off the line and mark trees that were too far away from the line.

X Q. 268. And in making the marks themselves in the
2111 actual physical work, a surveyor may be careless, may he not?

A. Yes.

X Q. 269. In making a blaze, for instance, is that usually made with one chop or more than one?

A. More than one.

X Q. 270. Might it not happen that the ax was struck into the tree and instead of being able to scoop it out it had to be pulled out?

A. Yes, that could happen.

X Q. 271. And substantially a new commencement made?

A. That could happen.

X Q. 272. And in making a blaze with more than one chop would it not be possible that they might have in the successive chops not taken off all of the mark of the blaze?

A. Of course that might happen.

X Q. 273. And if some of those marks were renewed, in say 1852, might it not have been a reason for renewing the blaze on that tree No. 30 that some of the bark had not been taken out in the original blaze and it was then taken out to make it a complete blaze?

A. I think so. Of course that is merely speculation, but might have been.

X Q. 274. But what you said of the erring of surveyors all together was all speculation?

A. Yes.

X Q. 275. The one is as good as the other?

A. Yes.

X Q. 276. Permanent marks are only such as go to the wood, I suppose?

A. Yes.

X Q. 277. And the discoloration would only take place where the bark had been completely taken out? Is that correct?

A. Well it would occur so far as the bark was loosened from the tree.

X Q. 278. But there must be some separation from the bark and the tree itself, the wood of the tree?

A. Yes.

X Q. 279. That comes from exposure from the weather—
2112 that discoloration from the removal of the bark?

A. Yes.

X Q. 280. Did you count the annual layers on that block that was produced by Mr. Burns?

A. Yes.

X Q. 281. What did you find those annual strokes, I mean marks to be, the diameter marks I mean?

A. I am not positive what I did make the marks now, whether it was 88 or 89 years old, but one or the other as I remember now.

Redirect examination by Gen. CATES on behalf of the Defendant, State of Tennessee:

R. D. 1. Mr. Williams, taking that block produced here by Mr. Burns, I will ask you to state whether the direction of the ax in the wood in the two lower notches indicate to you a blow for the purpose of hacking or a blow for the purpose of blazing?

A. They indicate for the purpose of hacking. I see no indication that they were made for the purpose of making a blaze.

R. D. 2. Now you were asked, in substance, if it was not possible for the remarking in 1852 or 1853 to make a perfect blaze where an imperfect blaze had been made before. What reason could there be for that?

A. Well I don't know.

R. D. 3. Would it have been possible in 1852 or 1853 for a man to have stood there by that tree and know that the ax marks made in 1820 or 1821 didn't go into the wood, or how far they went into the wood?

A. Yes, I think it would have been apparent whether the hacks had gone to the wood, or hadn't gone to the wood, and it would have been apparent also at that time whether there had been a blaze reaching the wood or not.

R. D. 4. The probabilities are that in 1852 or 1853 that that tree on that South side showed just four distinct clean cuts or hacks, isn't it, in the bark?

A. So far as the length of that block is concerned and for
2113 that distance on the tree I haven't the least doubt but that is exactly what it did show.

R. D. 5. But do those four hacks indicate anything in the way of

line marks in Tennessee or on the North Carolina-Tennessee boundary line?

A. I have never seen any line any where marked with four hacks of the same age. In the Ocoee lines, the section and quarter sections lines, we very often remark lines. I often do myself. When I find the original marks or other old marks on the tree of two hacks I will place two new hacks either above or below those so as not to disturb the older marks.

R. D. 6. But those four hacks are evidently all of the same age?

A. They are.

R. D. 7. Now do they indicate anything known in our statutes or by the habit or custom of surveyors in that country so far as your observation and experience goes in 1821?

A. No I never saw or heard of a line being marked with four hacks.

R. D. 8. Now do you know of any attempt or any effort for an attempt to remark the State Line in 1852 or 1853?

A. No.

R. D. 9. Now you were asked about that mile circle on the South side of the river which on this map of 1821 appears to be right at the South edge of the river, does it not?

A. Yes.

R. D. 10. Now according to your measurement of the distance from the 59th Mile Tree to the river and assuming the measurement of the river as given by Hale to be approximately correct, how far South of the river would be that mile circle, if it is the 65th Mile Circle?

A. Well it ought to be between 1100 and 1200 feet, nearly a quarter of a mile.

R. D. 11. Let us get at it more accurately than that. I believe you said that according to your measurement from the 59th Mile Tree to the river was 5-51 100 miles?

A. Yes, that was my measurement.

R. D. 12. So that the first mile circle or tree or whatever it was Northeast of the river ought to be about 5-51 100 miles Northeast of the river?

2114 A. Should be.

R. D. 13. How many feet in 51 100 miles?

A. 2962.8 feet.

R. D. 14. Now then Mr. Hale gives the width of the river there from bank to bank to be 560 feet, doesn't he?

A. As I remember it, it was 565.

R. D. 15. Add that to the 51 100 and tell us how many feet we have?

A. 3257.8 feet.

R. D. 16. Then according to that measurement, how far would that mile circle be South of the river?

A. 2022.2 feet.

R. D. 17. Now suppose Mr. Williams that the 64th mile tree is only 60 poles Northeast of the river, how much is that in feet?

A. 990 feet.

R. D. 18. I use that illustration because in one of these North

Carolina grants it calls for the 64th mile tree 60 poles North of the river—I refer to Grant No. 1501 to William H. Thomas included in Exhibit No. 11 in the deposition of W. D. Hale. Now add the distance across the river according to Hale's measurement to that 60 poles, and how many feet do you have from the 64th mile tree according to the call in this grant to the South bank of this river?

A. 1655 feet.

R. D. 19. Now then if the 64th mile tree is 60 poles Northeast of the river and the river is 565 feet wide, how far is it from the South bank of the river to the 65th mile tree or circle or rock or whatever it was?

A. I answered wrong in the last distance given. I added 665 feet to the 990 feet instead of 565, and I should have answered 1555 feet instead of 1655 feet. Taking the 1555.5 feet from 5280 feet in a mile would leave 3725 feet which should be the distance to the 65th mile tree from the South bank of the river.

R. D. 20. That is more than two thirds of a mile, isn't it?

A. Yes.

R. D. 21. Now according even to the small scale of this 2115 map of 1821 that distance of 3725 feet could be easily shown on the map, couldn't it?

A. Yes.

R. D. 22. It is a little bit more than a quarter of an inch according to the scale of that map, isn't it?

A. I think so.

R. D. 23. Now Mr. Williams when you went up that line from the South side of the river opposite the Hemlock toward Hangover, state whether or not Mr. Hale showed you a Black Oak Tree which he had blocked as carrying or bearing State Line marks many years ago and to which he referred in his examination in the Heland-Bedding case?

A. He showed me two or three trees that he had blocked but I can't recollect distinctly whether he showed me the black oak near the river or not, but he did show me some trees that he had blocked.

R. D. 24. Now if the 64th mile tree be 51 100 miles Northeast of the river and assuming that the river is about 565 feet wide, the 65th mile tree is a little bit less than a half mile Southwest of the river? Isn't that right?

A. Yes, it would be approximately two-fifths of a mile.

R. D. 25. Now if that 64th mile tree is 51 100 of a mile Northeast of the river and the river at that point instead of being 565 feet wide is only about 300 feet wide, that 65th mile tree is just about a half mile Southwest of the river, isn't it?

A. No, it would be less than a half a mile.

R. D. 26. How much less?

A. About 500 feet.

R. D. 27. I believe you said 51 100 miles is 2692 feet, isn't it?

A. Yes.

R. D. 28. And add 300 feet to that and you would have 2992 feet, wouldn't you?

A. Yes.

R. D. 29. And then taking 2692 feet from 5280 feet in a mile you would have how many feet?

A. 2588 feet.

2116 R. D. 30. And in feet, how much less than a half mile is that?

A. Be 52 feet.

R. D. 31. So that it would be within 52 feet of a half a mile South of the river?

A. Yes.

R. D. 32. Supposed you crossed that river in a direct line from that Hemlock tree at the South bank, what kind of ground would you be on—at the South bank you would be at the level of the river, wouldn't you, practically?

A. Yes, there is a little level land on each side of the river as I remember it from the Hemlock down to the bank of the river on the North side for a distance of 160 or 175 feet. It is a gentle slope. Well then there is a little gentle slope on the South side, I don't remember how much. It is different at different places.

R. D. 33. And of course right there at the river you wouldn't be on a ridge?

A. Of course not.

R. D. 34. Then from that South bank at that place what is the nearest and direct route to the main ridge and the extreme height thereof?

A. Well the nearest ridge and the nearest way to reach it is to continue in the same direction on the South side of the river in which the line approaches the river and it is only a short distance from the South bank of the river up to the top of what is known as the Hangover Ridge. I don't know the distance, but it is not far.

R. D. 35. Then how would you go?

A. I would go up that ridge after reaching the top of it.

R. D. 36. Would you go to Hangover peak, Hao or Stratton Bald or Fodder Stack?

A. Go to Hangover and Stratton Bald.

R. D. 37. Would that route that you have just described comply with this call in the report of the commissioners, from Tennessee River to the main ridge, and along the extreme height of the same", etc.

A. I think it certainly would.

R. D. 38. Now in some question put to you by Mr. Matthews it seemed to me that he assumed that you said that the bluff on

2117 the South side of the river opposite the Hemlock run right up there 900 feet high. Did you make any such statement as that, or if you referred to an elevation of 900 feet, of the ridge, at or near that place, what did you mean?

A. The face of the mountain on the South side of the river is steep and rocky all along so far as I know about it, in fact it is on both sides of the river for miles and going up that steep rocky face of the mountain from the river bank to the top of that ridge we ascended some 900 feet.

R. D. 39. I notice here on this map, Exhibit No. 1 to Hale's deposition, a short distance Southwest of the river on the Hangover line an elevation of 1960 feet. Is that approximately the point you have just referred to?

A. Yes.

R. D. 40. And that is about how far from the river?

A. You mean in elevation or horizontally?

R. D. 41. Not in elevation—the river seems to have an elevation of 1080 feet or 1050?

A. 1050.

R. D. 42. And this first elevation given on the map Southwest of the river is 1960 feet. That shows an elevation above the river at that point of 940 feet. Now how far up that ridge from the river toward Hangover peak is it before you reach that elevation of 940 feet above the river?

A. By the scale of his map it appears to be a little more than $\frac{3}{8}$ of a mile.

R. D. 43. Now you were asked a good deal Mr. Williams about a line projected across the Tennessee River from the point marked "Lone Pine" at a course South 42 West which, as I understood you to say, was the reverse of the course from Lone Pine to Parsons Bald sighted by you?

A. Yes.

R. D. 44. And you were asked if that line didn't cross Slick Rock Creek?

A. It would as shown on maps filed by both Mr. Hale and Mr. Burns.

R. D. 45. Well, approximately, how much above its mouth would it cross Slick Rock?

A. More than 5 miles.

R. D. 46. Well now does that course, South 42 West, fit the 2118 North Carolina contention in this case?

A. No.

R. D. 47. Does it fit either contention?

A. No. It doesn't fit the original map itself.

R. D. 48. Well, I will ask you this question since you made reference to the original map: what is the course of that line supposed to be to extend from the 64th to the 65th mile circle and crossing the river?

A. The course as I measured it from the map is South 69 West, and in taking courses from that map I used the feint parallel pencil line shown on the map as meridians.

Mr. HOPKINS: Instead of the stars?

The WITNESS: Yes.

R. D. 49. Now project that line on that same course 7 miles Southwest of the river, and tell me how far it would be from this sharp turn in the State Line which Mr. Burns noted as "Fodder Stack" on Exhibit "A" to the deposition of Onley Williams—I mean how far from that point designated as "Fodder Stack" according to the scale of this 1821 map?

A. Be 1144 poles or 14 poles more than $3\frac{1}{2}$ miles.

R. D. 50. Now Mr. Williams lay down on this map, Exhibit "A" to Williams' deposition, that line projected 7 miles from this mile circle on the South bank of the river as shown on this map of 1821 according to the course of that line crossing the river, then lay down the line running from the point reached by that 7 mile line to the

point indicated as Fodder Stack by Mr. Burns, and place on each of the lines so laid down on this map the distance?

A. I have done so in dotted line.

R. D. 51. Now that point 7 miles South 69 West from that mile circle on the South bank of the river runs to Citico Creek, as shown on this map, don't it?

A. Yes.

R. D. 52. And from that point it is 3 miles and 184 poles to the point which Mr. Burns has indicated on that map as his belief in regard to the location of Fodder Stack?

2119 A. Yes.

R. D. 53. About what direction is the end of that line 3 miles and 184 poles long from that point indicated as "Fodder Stack" by Burns on that map?

A. It is about North 50½ degrees West from the point indicated on the map as "Fodder Stack."

R. D. 54. Now Mr. Williams you said that a course across the river South 42 West didn't conform to the course as shown on this map of 1821 of that line South of the river as shown on that map. What is the course of that line supposed to be between 6 and 7 miles from the river to where it makes, according to the map, a sharp turn to the Southeast?

A. I make that course South 37 West.

R. D. 55. Now you were asked Mr. Williams about whether if you went up Slick Rock Creek and found a line marked there, whether it would have a controlling weight with you in the determination of the location of the line along that place, and I don't remember precisely your answer, but I will ask you if you have read the deposition of Mr. Burns?

A. Not as taken in this suit, I have read some of his testimony taken in the bill of review suit.

R. D. 56. But you have examined his map, which is complainant's "D" filed in this case, haven't you?

A. Yes, or a map like it.

R. D. 57. I mean this blue print here before you?

A. Yes.

R. D. 58. State whether, assuming that he has correctly laid down Slick Rock on that map and run up it and found trees marked on both sides of it as claimed by him to a point some 5 miles Southwest of the creek, does that running and that line correspond with the line Southeast—Southwest I mean—of the river as shown on this map of 1821, taking into consideration all that is shown on this map of 1821 and the report of the commissioners of which this or some map was said to be a part?

A. I don't think the maps correspond with each other from the examinations I have made. Of course it is very difficult to pick out

2120 any point on the 1821 map and say that it is at a certain place on the ground because of the scale of the map and because the points which we know and note and show on the plats now are not shown on the original plat, from which we can very well make comparisons.

R. D. 59. From or according to this map of 1821 is it possible for that State Line Southwest of the river to run back and forth across a stream?

A. The map of 1821 doesn't show it. It doesn't show it as crossing the creek at all.

R. D. 60. And it shows that the line is entirely away from the stream after a distance of a little less than a mile Southwest of the river, doesn't it?

A. Yes.

R. D. 61. Now Mr. Williams, suppose you would go along Slick Rock Creek and find some trees marked bearing State Line marks and you took the commissioners' report from the Tennessee River to the main ridge and thence along the extreme height of the same and you found that the map which is presented here as the original map called for in that report shows the line running from immediately Southwest of the river, first along the side of a ridge, then at the distance of two miles on top of the main ridge; thence with the extreme height of the main ridge Southwestwardly, etc. Under such circumstances would those marked trees control you in the location of a line up Slick Rock?

A. Not until I was satisfied beyond any doubt at all. I should have to have absolute proof from the marks themselves for it to be a controlling factor.

R. D. 62. You were asked about a ridge which runs down from Little Fodder Stack to the river just below the mouth of Slick Rock Creek and you compared it with the ridge on which the State Line runs as contended by Tennessee near the river and I understood you to say that ridge was higher than this ridge which you have mentioned an elevation of 1,960 feet on it?

A. I think it is.

R. D. 63. Were you ever on that ridge down there below the mouth of Slick Rock?

2121 A. No, but I sighted across to it from the Hangover Ridge and over the top of an instrument and I am not sure whether I had a hand level or not, but I know that I did sight across the top of an instrument occasionally. Of course those two points are not equally distant from the ends of the ridges.

R. D. 64. Then how far from the river up that Little Fodder Stack lead North and West of Slick Rock would it be before it got as high as the Hangover Ridge close to the river?

A. Well I don't know.

R. D. 65. A mile or so?

A. Probably so, but I don't know. I only know that I could see that that ridge or lead extended into a bend of the river and the points which I was comparing must have been quite a long ways from the river as compared with the same points from which I made the comparisons on Hangover Ridge but I don't know as to the distances on it.

R. D. 66. Of course well up this Little Fodder Stack ridge it is considerably higher than the Hangover lead just South of the river?

A. Yes, it is very much higher than Hangover Ridge.

R. D. 67. Now in your cross-examination you referred to a stream which emptied into the Tennessee River into the South side between Cheoah River and a point opposite the marked fore and aft Hemlock. What size stream was that?

A. Well it is a very small stream. It is just a common mountain brook. I thought when looking at it that it must be from a half to three quarters of a mile long, judging from the amount of water in the stream at the time I was at it, or rather when I saw it.

R. D. 68. Now what was its approximate location with relation to this spur that runs off from the Hangover Ridge to the right or where Tennessee claims the State Line to be up in the direction of Cheoah?

A. I don't remember much about the distance, I remember that it wasn't as much as half way from where I or rather we crossed the river on the line up to the mouth of Cheoah and probably not more than a third of the way up, but I don't remember very well about the distance, didn't measure it.

2122 R. D. 69. Now there is another spur runs down from Hangover Ridge, the main Hangover Ridge toward the Cheoah and reaches the river just about its junction with Tennessee River, don't it in that neighborhood?

A. Yes, there is a spur runs off there, but I know very little about it.

R. D. 70. Now you were examined about a spur running from Hangover Ridge to Cheoah and then you was also asked if spurs didn't run from Fodder Stack to the Tennessee River. Don't you know that the Big Fodder Stack Ridge runs down and ends in the neighborhood of Citico Creek?

A. I know that the highest lead runs off towards Citico Creek and I have been out from Little Fodder Stack what is called the Salts Springs Mountain North a considerable distance in that direction, probably as much as a mile and a half or two miles and it was the highest mountain so far as I followed it, and then there are other spurs making off from the Salts Springs Mountain, one of which is called Telassee Mountain and which is between Telassee Creek and First Creek, numerous spurs making off toward the river from the Little Fodder Stack and Salts Springs Mountain.

R. D. 71. Mr. Williams, in your cross-examination it seemed to me that counsel was assuming in his questions that Cheoah River had nothing to do with the State Line and in one of your answers you said in substance, if not the exact lang-e, I am not sure, that they did not show Cheoah on the map. What did you mean by that?

A. Well I understood from his question that he asked me to assume that the Cheoah wasn't shown on the map and I answered that I wasn't sure that it didn't show it.

R. D. 72. Can you be sure in your mind that this stream marked "Creek" on the South side of the river is not Cheoah River?

A. No. I will say that it more nearly represents Cheoah to me than it does Slick Rock Creek.

R. D. 73. Now Mr. Williams, you made on the North side of that river a pretty thorough examination of the line, didn't you?

A. I think I spent six days in all.

R. D. 74. I mean the line back as far as you have testified
2123 about?

A. Yes.

R. D. 75. Now coming back to that line from the 59th Mile Tree to the Tennessee River, I will ask you to state whether or not some distance Northeast of the river, how far I don't know, you found a ridge leading off to the mouth of Cheoah River?

A. Yes, and it makes off from the State Line at the point which I have described as Lone Pine in a sharp turn in the line and in the ridge.

R. D. 76. Now Mr. Williams let me ask you this question: but for the location of that marked fore and aft Hemlock tree on the North bank of the river, which you understood from parties with you was on the line, but eliminating that, if you had been coming down there from the 59th Mile Tree and following the call of the Cession Act, which I read to you from the answer and cross-bill of Tennessee in this case, or that part of it pertaining to this particular locality, as follows:

"Thence along the ridge of said mountain between the waters of Doe River and the waters of Rock Creek to the place where the road crosses the Iron Mountain; from thence along the extreme height of said mountain to the place where Nolichucky River runs through the same; thence to the top of the Bald Mountain; thence along the extreme height of said mountain to the Painted Rock, on French Broad River; thence (and this is the particular part) along the highest ridge of said mountain, to where it is called the Great Iron or Smoky Mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka Mountain, etc."

And also the description from the Act of North Carolina confirming the report of the commissioners, as follows:

"Begins at a stone set upon the North side of the Cataloochee Turnpike road, and marked on the West Side *of* Ten. 1821; and
on the East side N. C. 1821, running thence a Southwest-
2124 wardly course to the Bald Rock on the summit of the great Iron or Smoky Mountain, and cont-uing Southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian Town of Tellassee, etc."

Now taking those for your guidance and the report of the commissioners in conformity therewith and using practically the language set out in this North Carolina act where would you run that line coming down to the 59th Mile Tree, how would you run that point from the point which you have designated as "Lone Pine"?

A. I should have gone down toward the mouth of Cheoah. I couldn't when I first went there have found the way down to the Hemlock if it had not been pointed out to me.

R. D. 77. From that point "Lone Pine" to the mouth of Cheoah or about opposite the mouth of Cheoah would you have followed a well defined ridge?

A. So far as I have seen the ridge and been on it it would have been a well defined ridge.

R. D. 78. Now suppose you had followed that route and crossed the Tennessee River just about the mouth of Cheoah and then running Southwestwardly, would you immediately on your right had a ridge, or would you have run the line somewhat on the side of a ridge?

A. Well it would have gone at the side of the Hangover Ridge.

R. D. 79. And at the distance of two miles where would you have been?

A. Would have been somewhere on top of the Hangover Ridge—just where I couldn't say.

R. D. 80. I will ask you to state if you wouldn't have been just about as far from Cheoah River as the second mile circle shows on the map of 1821 to be from that stream marked "Creek"?

A. I couldn't say, knowing as little as I do about the distances there.

R. D. 81. These Acts of both States and the commissioners' report embody this in their description of the State Line: "and continuing Southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian Town of Tellassee." Now I see a place on that map down there indicated—do you know where the old Indian town of Tellassee was?

2125

A. No, I don't know where the town itself was. I know by information.

R. D. 82. By tradition and the general understanding in the country there?

A. Yes.

R. D. 83. Where was it?

A. Situated somewhat about the Tellassee Ford.

R. D. 84. Whereabouts is Tellassee Ford with reference to the mouth of Tellassee Creek?

A. It is below there, as well as I remember it is a half mile or a mile below there to the mouth of Tellassee Creek.

R. D. 85. Now Mr. Williams, examine this map of 1821 and tell us how far it is from the place where this line crosses the Tennessee River in a straight line to the mouth of that stream marked "Creek"?

A. As scaled on a straight line it is a little more than 10½ miles.

R. D. 86. Following the meanders of the river—would it be further or shorter?

A. It would be further by the river.

R. D. 87. Following the turns and meanders of the river?

A. Yes, because a part of the river between the State Line and Tellassee that is crooked.

R. D. 88. There is a considerable bend in the river where the State Line crosses it and Tellassee, isn't there?

A. Yes, two or three of them.

R. D. 89. Now do you know how far it is approximately in a straight line from the mouth of Slick Rock to the mouth of Tellassee Creek?

A. No, I don't know of my own knowledge. I have been over the Tellassee path that runs from Tellassee Creek towards Slick Rock for some three or four miles and have been told that it was 7 miles by that path, and going over as much as I did and estimating the balance of it I thought that distance was about correct, but I don't know any further than that.

R. D. 90. Then if it is 10½ miles in a straight line from where this line crosses the Tennessee River and the Tellassee Creek
2126 and the old town Tellassee is a half mile below there, then in a straight line it is 11 miles from where this line crosses the river to the Tellassee old town, according to the scale of this map?

A. Yes.

R. D. 91. Now you were asked about those courses and distances which you run between what is supposed to be the 58th and 59th mile circles on this map, and you were asked if it were possible to show those short lines run by you, the three short lines Northeast of the 59th Mile Tree and I believe you said it would be impossible to show lines that short upon the scale of this map?

A. It would.

R. D. 92. Now Mr. Williams, I see between these mile circles at different places a black dot or point. What is it understood that those black dots or points mean?

A. I understand them as being the end of the courses as laid down on the 1821 map.

R. D. 93. And to indicate a bend or change in the course at those black dots?

A. Yes.

R. D. 94. Look at this line that crosses the Tennessee River, the line between the two mile circles there. Is there any dot in that line?

A. I see none.

R. D. 95. Suppose the commissioners had run that line down to that Hemlock, the fore and aft tree on the North bank of the river as shown on these maps and then run down the North side of the river something like a half a mile as shown by Mr. Burns on his map, complainant's Exhibit No. 4, tell me whether such a sharp change in the course or bearing would have been indicated on this map of 1821 if that is what these black dots mean?

A. It does seem that there should have been a dot between those mile circles and at such a turn as there is on the ground turning down the river from the course which they were on to the Hemlock.

R. D. 96. Now Mr. Williams, going back to those three courses in regard to which you were cross-examined just Northeast of the 59th Mile Tree. The first course, as I remember you said, was South 63 West?

2127 A. Yes, beginning at the point we did Northeast of the 59th Mile Tree the first course we took going Southwest was South 63 West.

R. D. 97. What was the next course?

A. The second course was South 55¾ West.

R. D. 98. The next course reaching the 59th Mile Tree?

A. South 45¾ West.

R. D. 99. Is that a straight line?

A. No.

R. D. 100. What is the average bearing of that line?

A. That would have to be calculated from latitudes and departures and which I am not prepared to do, but the second course would be something like an average of the three.

R. D. 101. That is South 55 West?

A. Yes, that would be something like an average.

R. D. 102. Now then take this map of 1821 and assuming that that last mile circle North of the river is a 64th mile circle. Go back to that straight line between the 58th and 59th mile circles and tell me the bearing or course of that straight line according to the course shown on that map?

A. The course as near as I can measure it from the original plat of 1821 is South 27½ West.

R. D. 103. As I understood you were running the crest of a mountain?

A. Yes.

R. D. 104. Now what was the difference between the average of the courses run by you of that crest of the mountain immediately Northeast of the 59th Mile Tree and the course of this line between the 58th and 59th mile circles shown on this map to be a straight line?

A. Assuming that 55 degrees would be the average of the three courses there would be a difference between that course and the course as taken from the map of 27½ degrees.

R. D. 105. That would be a considerable difference at the end of a line a mile long between those two courses, wouldn't it?

A. Yes.

2128 R. D. 106. You were asked about this ridge leading from the Fodder Stack Ridge down to Slick Rock Creek. Did I understand you to say that you went on that ridge?

A. No, I have not been on there.

R. D. 107. So you can't tell the elevation of it at the point it leaves the creek?

A. No.

R. D. 108. Mr. Williams, you were asked about whether following Hangover wouldn't be irreconcilable with any stream. Following the crest of any ridge would be irreconcilable with following a stream, wouldn't it?

A. Yes.

R. D. 109. But please state whether assuming that this stream marked "Creek" South of the river should be Cheoah and the line run and intended to be reported by the commissioners was on the Hangover Ridge or Lead, would those physical facts be an irreconcilable fact in conflict with those on the map shown here, treating this stream as Cheoah?

A. I hardly know. I have never been able to reconcile the map

to either Cheoah or Slick Rock Creek, or to any other stream in that vicinity.

R. D. 110. Now you were asked about whether going up Hangover you could see Slick Rock and you said that you could see the basin—could see a basin from there to the right below?

A. Yes.

R. D. 111. Couldn't see any creek or the water which makes the creek, could you?

A. I don't remember any point from which I could see the creek or any water.

R. D. 112. But off to the left can't you see the water of Cheoah?

A. No. I don't remember any point from which I could see either.

R. D. 113. Now you were asked about Cane Creek, which runs into the Hiawassee River down here. That creek is called for in the report of the commissioners, isn't it?

A. Yes.

R. D. 114. And that line don't cross any nearer its mouth than it does up here on the Tennessee River if that stream is Slick Rock, does it?

2129 A. Well on the ground the State Line strikes the Hiawassee River within a few hundred feet of the State Line. It is somewhere from 500 to 700 feet from the State Line to the mouth of Cane Creek.

R. D. 115. And yet it calls for Cane Creek?

A. Yes.

R. D. 116. Now you were asked if Slick Rock wasn't the only stream along that line so far as you knew it from the 59th Mile Tree Southwestwardly that run that long close to, or approximately close to the State Line, and you referred to another stream somewhere over there on the North side of the river. Where did that stream head?

A. Well there are three or four of the little head prongs of it.

R. D. 117. Tell us whether it was on the North side of the river—tell us where that stream was—did you refer to a stream on the North side of the Tennessee River which headed near that Turnpike Road?

A. I did.

R. D. 118. Which crosses the State Line between the 59th Mile Tree and the Tennessee River?

A. Yes.

R. D. 119. Was that the stream you was talking about?

A. Yes.

R. D. 120. Tell us about that stream?

A. There is a spring close up to the top of the mountain on the turnpike.

R. D. 121. On the North Carolina or Tennessee side?

A. On the Tennessee side from which I used water at a camp at one time and it is on top of the mountain and then there is a branch coming into that a short distance below the spring that heads up towards the mountain and towards the Turnpike and further up the branch is another branch heading into that same branch. Down to

the Southwest of the Turnpike at a place called Locust Gap it is probably a quarter of a mile from the State Line down to that stream.

R. D. 122. Then where does it go?

A. Well it continues for some distance nearly paralleling the State Line, and while I have gone down that branch I couldn't say
2130 just where it runs into the Tennessee River or how much further it nearly parallels the State Line.

R. D. 123. You say you don't know where it runs into the Tennessee River?

A. No, I couldn't give the comparative location of where it runs into the Tennessee River.

R. D. 124. Have you ever been where it runs into the Tennessee River?

A. Yes.

R. D. 125. About how far is that below the mouth of Slick Rock?

A. I wouldn't want to hazard a guess at the distance because it is very rough traveling along the bank of the river and it is difficult to estimate distances.

R. D. 126. Is it a mile or two miles?

Mr. MATTHEWS: I object because that is leading and the witness has said he would not even hazard a guess.

R. D. 127. I don't mean an accurate statement of it, Mr. Williams, and I don't want you to even guess at it, but using your best judgment, give us an approximate statement about it—I would like to have that.

Mr. MATTHEWS: Same objection.

A. I don't think I could approximate the distance.

R. D. 128. Could you state whether it runs into the river on the North side between where the State Line crosses the river and Tellassee Creek runs into the river on the South side?

A. It is not half way of that distance between the line and Tellassee.

R. D. 129. Now you say you have been to the mouth of that stream or creek that you have just been talking about?

A. Yes, I have been all the way down the North bank of the Tennessee River to Tellassee.

R. D. 130. How does that creek down there at its mouth compare with Tellassee Creek?

A. Well as I remember the two streams it is nearly as large as Tellassee. I know Tellassee is a longer stream, but it is less in proportion to its length than that stream on the North side of the river.

R. D. 131. Now Mr. Williams you were asked by Mr. Mat-
2131 thews about this line projected across the river from Lone Pine to where it would strike the Fodder Stack Ridge near Rock Stack. So projected it would leave a considerable angle and the highest part of Fodder Stack Ridge, including Fodder Stack peak to the right, that is to the North and West of such a line, wouldn't it?

A. Yes.

R. D. 132. You were asked on cross-examination by Mr. Matthews about the lines in the Ocoee District being correct or accurate. What was it you said in reply to such question?

A. As I remember the question and answer now, he asked me if the streams and topography was correctly shown on the maps in the Entry Taker's office and I answered that I was not very familiar with them but I thought the crossings of the streams on the lines were properly located, but as sketched in between crossings of lines they were often inaccurate. That is about as I remember the question and answer now.

R. D. 133. Have you had any trouble in running those lines of the Ocoee District?

A. Yes, in some places, but not as a rule.

R. D. 134. Now in his question Mr. Matthews assumed that in your work you spent eleven days of the entire time North of the river. According to my recollection of your answer you said yes. Has Mr. Matthews himself assumed that you stayed eleven days all together on the line—is that right?

A. The eleven days was in his question and not in my answer. I think that I did state that there was 8 days of the time spent from Parsons Bald to the junction of the Fodder Stack Ridge with the Hangover Ridge.

R. D. 135. Now as I understood your answer on direct examination when you went up there in December, 1909, you were up there on that work 11 days. See if I am correct by looking at your note book, and then you were back there again in September, 1910.

A. Yes I was on the State Line 11 days in December, 1909.

R. D. 136. Now in September, 1910 you were back there?

2132 A. Spent three days on that State Line.

R. D. 137. That last was North of the river too?

A. Entirely.

R. D. 138. Now Col. Posey, give me your attention. You were asked Mr. Williams by Col. Posey whether if this map of 1821 showed the Tellico River cutting through the mountain it wouldn't be a pretty fair representation of the location of the line run by way of State Ridge. Now I will ask you if it showed a little of the Tellico River cutting through the State Line it wouldn't be a pretty fair representation of the shape or course of the State Line if it was run around this dotted line up here in the disputed Tellico territory, according to the Ocoee map line?

A. Yes, the shape on the 1821 map seems to fit with the shape of the Ocoee line as shown on Exhibit 1 to Hale's depositions, seems to correspond pretty well.

R. D. 139. Well Col. Posey was asking you about following the shape of the map to go—that it would go around his State Ridge Line. That would be ignoring all together the etching and shading on this map of 1821, showing that it followed a continuous ridge around the headwaters of Tellico River, wouldn't it?

A. Yes, it would ignore everything except the shape of the line.

R. D. 140. Now he also asked you about whether or not this stream which Mr. Hale has marked "Tellico River" was a fair repre-

sentation of that river. He also asked you if there was anything on that map to show the terminus of that Tellico River as it is laid on the map wouldn't be a point to show whether the State Line was near the mouth of it. Does that map purport to show the mouth of Tellico River?

A. No.

R. D. 141. Where does Tellico River run into the Tennessee River?

A. Close by the L. & N. Railroad and close to a point known as Niles Ferry on the old ferry road.

R. D. 142. How far is that from where the State Line crosses Tennessee River?

A. By the river or by the road is 25 miles or more. A
2133 straight line probably 20 miles.

R. D. 143. Was there any particular reason why the mouth of Tellico River ought to have appeared on this map of Hale's? Would it throw any light upon the question?

A. I think not.

Recross-examination by Mr. POSEY, on behalf of the complainant, State of North Carolina:

X Q. 282. This purchase—Ocoee District—you say the shape of this map would be the same shape as the line of the Ocoee purchase as well as the shape of our State Ridge Line. Practically you said it would indicate that. Is that right?

A. I didn't mean to say that. I don't think I said that. I said the shape of the Ocoee line resembled the shape of the map.

X Q. 283. As well as the shape of our line?

A. Yes.

X Q. 284. You have got to go clear around McDanield Bald to get up the headwaters of Tellico?

A. Yes.

X Q. 285. But it don't indicate that it went there according to the shape of the map?

A. Yes.

Redirect examination by Gen. CATES, on behalf of the defendant, State of Tennessee:

R. D. 144. But the map does show all the waters of Tellico River on the Tennessee side of the line?

A. Yes.

2134 Recross-examination by Mr. MATTHEWS, on behalf of the complainant, State of North Carolina:

X Q. 286. Mr. Williams, your angles from which you have made your calculations and bearings, did you take them from that due South line at the South end of the map?

A. Yes, and from the faint pencil lines which are parallel to it.

X Q. 287. And not from the North point?

A. No.

X Q. 288. How much difference is there between those, the North point and that?

A. About 7½ to 8 degrees as near as I can measure it with instruments.

X Q. 289. What is the difference between that line as actually upon the ground and the due South meridian, do you know?

A. Not by test, but it's somewhere in the neighborhood of 7 degrees—not differing from that very much.

X Q. 290. Now that angle that you took from the river Southwest of Fodder Stack and said it was 37 degrees. If you made that allowance it would make that about 44, wouldn't it?

A. Yes.

X Q. 291. Now just one other question—did you ever observe any marked tree between No. 29 on Mr. Burns' map, complainant's Exhibit "D", which is called the Hemlock and the number 30 which you blocked and brought a portion of the block into court—did you observe any other marked tree between those on the North bank of the Tennessee River?

A. None which I thought were State Line marks.

X Q. 292. Did you find any marks resembling State Line marks on them?

A. I don't remember to have seen any.

X Q. 293. Were you looking for them—you were looking for them, weren't you?

A. Yes.

X Q. 294. Or did you find any West of it?

A. None which I thought were State Line marks.

2135 Redirect examination by Gen. CATES, on behalf of the defendant, State of Tennessee.

R. D. 145. About that last matter to which Mr. Matthews referred: When you and McNabb and Hale went there in September, 1910, that was after Chambers had testified about some trees that he had seen marked in that locality, wasn't it?

A. Yes, we had what purported to be a copy of Chambers' testimony respecting those marked trees.

R. D. 146. Did you look for them?

A. Yes.

R. D. 147. Did you find them?

A. No, we found a maple tree which we supposed he had described with Township marks, being a blaze between two hacks.

R. D. 148. Did Chambers' eyes ever get crossed so that he would see a blaze between two hacks as a blaze above two hacks?

Mr. MATTHEWS: We object to that.

A. I know very little about Chambers personally. I was with him on one survey. Been acquainted with him probably five years, but know very little about him or his work.

R. D. 149. Now you were asked by Mr. Matthews to tell from what point, or according to what point on this map you found the

bearing of the line Southwest of the river from the river to the point where it makes the sharp turn to the Southeast to be South 38 West, and I believe you said you found it to be that from this due South line laid down on the map from the Unaka Turnpike to the Georgia Line?

A. Yes.

R. D. 150. Why did you use that line instead of the North point on this pretty figure at the upper part of the map?

A. Because I know from having been on that due South line that it was run by a magnetic bearing and I assumed from that that all bearings were taken by the magnetic meridian. I couldn't believe that they would have done anything else but that, and that

2136 then would be the only way which you could measure angles on the map and get the bearings on the line.

R. D. 151. Get the bearings intended to be given by the commissioners?

A. Yes.

R. D. 152. Now in your answer to a question on re-cross-examination by Mr. Matthews you referred to lines in pencil, feint lines in pencil, on this map of 1821. I will ask you to examine this map and state whether or not this due South line as laid down on that map is projected toward the North from the Turnpike in a very feint pencil line for a considerable distance?

A. Yes, as I have already stated, the due South line seems to coincide exactly with one of those feint pencil lines and that feint pencil line is projected to the North of the Turnpike road.

R. D. 153. Now are there other pencil lines on that map parallel to that?

A. Yes, and appear to be about uniform distances apart.

R. D. 154. What would those feint pencil lines indicate to you?

A. Well they are about such as we usually see on a plat representing the meridians from which they platted the line.

R. D. 155. I will ask you to examine the map a little bit more carefully than you can from where you are sitting. Come here to the map and state if there isn't also laid down on that map any feint pencil marking lines crossing these other lines that you have described as being parallel with this due South line at right angles?

A. Yes, they seem to cross at right angles and seem to be about the same distance apart as the meridian lines.

R. D. 156. Isn't there one of such feint pencil lines crossing the due South line just about where it crosses the Hiawassee River?

A. Yes.

R. D. 157. At what angle does that feint pencil line approach this due South line?

A. It is at right angles or almost exactly so.

R. D. 158. Showing that pencil line at that place to be intended to run East and West?

A. Yes.

2137 R. D. 159. And then the other pencil lines on that map to the Northward parallel to it would also be running East and West, wouldn't they?

A. Yes.

R. D. 160. Which, in your judgment, would be the more accurate way to measure on this map—to take this due South line, to measure from that due South line as controlling, or from this North point up here from this figure?

A. I prefer taking the directions and the angles from the pencil lines and from the due South line because I am not sure what the North point does represent, whether it represents a true meridian or not.

R. D. 161. I will ask you to state Mr. Williams whether the North point on this figure up here conforms either to and lines drawn in conformity therewith—conform either to this due South line or to these f·int pencil lines running at right angles with each other and forming squares?

A. No, they do not conform.

R. D. 162. Now a question I forgot to ask you—that I forgot to ask you before—Suppose Mr. Williams down here in this Tellico Country such differences are shown from the lines actually run out and those apparent on the map as would require a variation of some three or four degrees to reconcile them. Is there any reason why the same variation should not apply to the Slick Rock Country?

A. No. If it applied to one it would to the other?

R. D. 163. What would you say about a running or a report which found variations necessary at one end and allowed none at the other?

A. Well for short distances apart like that I think they are straining a point to make things correspond.

Mr. MATTHEWS: We object to this answer as being a conclusion or an opinion about a matter that is a question for the Court.

And further this deponent saith not.

JOHN L. WILLIAMS.

Sworn to before me January 6th 1911.

S. E. CLEAGE,
Supreme Court Clerk.

2138 NORTH CAROLINA
vs.
TENNESSEE.

Depositions of H. M. Kent and C. B. McNabb, Taken at Knoxville, Tennessee, Jan. 7, 1911.

General Chas. T. Cates, Jr.

2139 KNOXVILLE, TENNESSEE,
SATURDAY MORNING, *Jan. 7, 1911.*

H. M. KENT, the next witness on behalf of the State of Tennessee first duly sworn testified as follows:

Examined by Maj. MCCROSKEY:

Q. 1. State your name and age?
A. H. M. Kent, age 53.

Q. 2. Where do you now reside?
A. Caldwell County, North Carolina.
Q. 3. What portion of the State is that?
A. It is the western portion of North Carolina.
Q. 4. Do you live in Lenoir?
A. No, three miles from there, that is my post office.
Q. 5. Where were you educated if at all?
A. My last education was at the University of North Carolina.
Q. 6. What course did you take?
A. An English course; an optional course; I took no regular degree. I did study French I believe.
Q. 7. What is your business?
A. I suppose I might very properly say Civil Engineering and Surveying.
Q. 8. How long have you been a surveyor?
A. Since 1880.
Q. —. How much experience have you had as a surveyor?
A. I done a little surveying commencing in 1880 and then I was elected County Surveyor of the County I live in and served two years and after that I was employed on railroad work and land surveying almost continuously since that: I was on the C. & N. C. Railroad on preliminary survey and location work for about three years; then on a Government survey near Birmingham to near Montgomery on the Coosa River about one year; and on the North Carolina road on a preliminary survey from Salisbury to Pittsburg.

2140 Q. 10. What experience have you had as a land surveyor?
A. I have been at work almost continuously, for five years for the Yadkin Lumber Co. surveying 65,000 acres, and examining the title; and two years for Morse Brothers in Rabon County, Ga., on 25,000 acres correcting lines and going over them; there were various disputed lines.
Q. 11. Prior to this five and two years what did you do?
A. I did work for citizens after I retired as County Surveyor.
Q. 12. Are you familiar with marks on trees, with their character, age, etc.?
A. Yes, sir.
Q. 13. Have you give- that subject study?
A. Yes practical study in examining lines in disputes and made satisfactory settlements, working on surveys and in our county I had to make a report to the court.
Q. 14. Were you ever called on to examine the disputed line for territory between North Carolina and Tennessee? For the purpose of ascertaining the true line and if so how were you employed and engaged?
A. Yes sir, Mr. Shields of Peck, Shields & Clark of Philadelphia, Attorneys, employed me to go out to Graham County, N. C. and look over that line and make some measurements and such examinations as I thought necessary try to determine the true State line on this boundary between North Carolina and Tennessee.
Q. 15. Were you furnished with any data and information? If so, what?

A. I was furnished with a lot of maps and data, yes.

Q. 16. State what maps and data?

A. I had a copy of this map of 1821; another was a copy of a map made by Burns; and another was a map made by Mr. Hale and I also had a copy of the Ocoee Tennessee District map; also a map of the 9th district of Cherokee County, N. C. and I don't recall just now any other maps; I had papers and quite a lot of data.

Q. 17. State whether or not you had the report of the commissioners?

A. Yes, a printed copy of that with dates and names and so on.

Q. 18. I will ask you if the copies of the maps furnished
2141 you were the same as are now before you and have been used as evidence in this case up to the present time?

A. Yes, I have looked over these since I have been here and they appear to be the same.

Q. 19. Did you have the same copies of Burns' and Hale's maps and the map of 1821?

A. Yes I had copies of them.

Q. 20. You had copies of the same three maps?

A. Yes sir.

Q. 21. And of the report of the Commissioners locating the State line?

A. Yes and a copy of the Cession Act of North Carolina.

Q. 22. Did you go and investigate?

A. Yes sir.

Q. 23. Who went with you?

A. Previous to my going to do this work I had met Mr. Shields about the middle of May 1910 and I was there about the 5th of June. But previous to that I had met Mr. Shields out there, to go over and look at the situation and the first time I went the weather was bad and I decided to go in and come back at a more suitable time and then I came and made the investigation with these papers.

Q. 24. Who was with you when you went?

A. Mr. Stewart was with me and I came out to where Stewart lives on Santelah and looked over the papers carefully and I decided I would go with Stewart who had been there frequently and lives there and had been on a survey there heretofore,—and look over the situation carefully before making survey or determining what I would do. And we went out across the Stratton bald and trail leading out to this territory and at a point in this place usually called the junction we turned down Fodder stack lead and began to examine for marks. We continued that examination along the top of that ridge to big fodder stack down the ridge to the point where the North Carolina line leaves the Slick Rock Creek and stayed at a man's house that night; next day we continued it; it was more convenient to go
2142 out a trail down Slick Rock Creek and I wanted to examine that but Stewart advised me we had better go out the Hang Over side and down a trail to the mouth of Slick Rock and I did that and examined on Hang Over lead from a little south of Cold Spring knob that day, on the top of Hang Over lead to near the mouth of Slick Rock creek I examined trees and marks for state

line and other marks and looked at the topography of the country as I went along.

Q. 25. Was Mr. Crisp with you?

A. Not at that time, no.

Q. 26. Well continue your narrative?

A. We worked that day looking over the country and looking for marks we blocked trees and looked for marked trees indicated on Burns' map and anything we could find and searched all the timber thoroughly for lines, etc., that night we went in to Dale Orr's and there we found Mr. Crisp who was a County Surveyor for Graham County N. C. he was there and claimed he came to make survey for other parties on Slick Rock Creek, land boundaries he told me and showed me copies of land calls in there on Slick Rock creek. Mr. Stewart the first day we came in there discovered trees that were marked frequently but they were too young for the state line marks and upon examination we found marks of corners, land line corners apparently and he admitted to me that he had helped to run some of these lines and they ran to these trees. I inferred there might be a mixture of marks in there and there might be confusion as to what they really were and as Mr. Crisp appeared to be familiar with them and said he knew where some of these marks were and I found he was familiar with these lines up in the region of Fodder Stack,—and they were plainly marked as corners,—so I decided he would be useful to me in distinguishing between line marks or land marks and corners and state line marks, if we should find any; I decided to take him as well as Stewart with me and did so and I employed him. At that time we were some distance from the Smoky Mountain and we decided to go down that side while we could because the people where we stayed lived nearer to the Slick Rock country, that was
2143 Dale Orr that I stayed with. So we went from Orr's across the river in a boat below the mouth of Choee and above the mouth of Slick Rock creek. In looking at the Smokey Mountain country several days as I did from the Fodder stack and Hang Over side, I noticed some ridges decidedly prominent that ran out from the Smokey Mountain pointing towards the river below the mouth of Choee and above the mouth of Slick Rock creek. And I wanted to examine those ridges for State line marks. One reason I decided to go that way was that I suggested we should not go down the river to the hemlock. We went up this ridge after crossing the river and should go up the sharp or higher point and examine then come back down the other line toward the mouth of Slick Rock, or rather what they said was admitted to be the North Carolina and Tennessee line, to the hemlock. We went up this ridge after crossing the riverand in going up it I found trees marked with hacks distinctly. They looked rather too young on the outside for State line marks. Crisp is a great walker and walked quite fast up that mountain and I thought he was going to walk me out. I called his attention to these trees a time or two, he was ahead all the time and he kept replying these were too young to be state line marks and after a while we were nearly to the junction of that ridge with the one they call the State line ridge, where it comes down, and I called to them to stop. Andy

Orr was also employed by me and he was there. He said he had been an assistant in the Gannett and Hayes party who had been there previously. I found a tree marked and they stopped then on that ridge.

Q. 27. What ridge?

A. The State ridge, going up from the river on the north side near the mouth of Cheoee, we found a marked tree and counted 64 years and then we resumed our course up.

Q. 28. In that connection at that point please explain definitely what ridge you were going up?

A. It is the high ridge leads from the Smokey Mountain range coming towards the Tennessee river, leads up from below the mouth of Cheoee up from the Tennessee and joins with the ridge near the lone pine or at it.

Q. 29. Continue your story?

2144 A. We continued up that ridge to this point they call the lone pine as I understand it and up the ridge looking for state line marks toward the top of the Smokey Mountain. After about two miles about from the hemlock tree on the river which has been testified about, we discovered what we thought was original state line marks on two trees. One was a center tree and one a side tree. We chopped into the side line tree and found the three hacks very nice, plain, smooth hacks about the same distance apart they appeared to be, it was carefully marked; it was a small tree and we counted the lines and made it 89 years and we were satisfied then that that was an original state line mark. The other tree was larger and was marked plainly. There were two hacks and we decided we were on the state line and that it was not worth while to go further. We turned back down the ridge leading in the direction of the hemlock.

Q. 30. Toward the Tennessee river?

A. Yes as we went up we did not distinguish where we came into the ridge leading up. As we went up it is a high ridge from below the mouth of the Cheoee; I said we would have to watch or we would get off; it was higher at this point than the one we were on; and coming back we watched the marks on the trees; they were younger, appeared to be younger than the state line; they were made subsequently to the state line marks; they looked like they might be land line marks; we followed that ridge finding marks of that character until we got to the hemlock; then back to the Tennessee River; we examined some marks and looked down the river from the north bank a little ways; we did not discover any marks there; and crossed the river and went in for the night. Then I took Stuart and Crisp out again and we went out through Slick Rock Gap another day. Now I will not say it was the next day because we had rainy days, for a day or two, and I didn't note the days in which we examined papers and maps; but we went out through the Slick Rock Gap and down a trail to the Slick Rock Creek, above the mouth of it. I should have said we went to the Slick Rock Gap and down Hang Over Ridge to the Sourwood Gap; I wanted to examine it again; I had been there with Stuart, but Crisp was there and I discovered he

was sharp eyed and a good woodsman; and we went to this
2145 creek and began our examination up the Slick Rock Creek for marks and we found several trees that had been marked on the bank of the creek, particularly on the east side, and in some places crossing the bend in the creek, looked *a*xactly as if they had cut out the brushes for surveying up the creek; I think that is what it was. We followed up the creek as well as we could, crossing and re-crossing several times, and the line seemed to change and sometimes seemed as if they had been in the creek, until we got to near the falls. I judge it to be about two miles from the mouth of Slick Rock. Stuart said he knew of the old line leaving the creek there at the falls and going towards Fodder Stack ridge, sometimes known as Salt Spring Ridge; and he believed it would show the old state line marks; and just out of sight of the falls but where we could hear the falls we found a tree marked, then found marked trees leading in a westerly direction and we commenced boxing trees; *t*he first one or two were not trees that would show marks distinctly; but when we got to where we could determine the age and commenced to box them we cut into one or two and they were doty trees and did not give satisfaction, and so we cut into good trees that showed the marks distinctly and counted them to be about 73 years old and we were forced to the conclusion it could not be state line marks; Stuart said he thought it was up until then, but he then thought it could not be. We continued up that line west of the falls; I didn't have an instrument; I was trying to get something to run to or from first; and hit on that range leading from Big Fodder Stack and led to the bend in the Tennessee River; I think one fork is the Tellassee and the other Salt Spring; it is shown on the maps and on the United States map; and went southwardly around the top of that ridge through a gap near the head of Little Slick Rock Creek in fact a number of gaps, one they called Stiff Knee Gap and knob, and over Little Fodder Stack and through various gaps and knobs until we got to Big Fodder Stack again; that was another time I had been there; and we continued that examination for trees marked; this examination was backwards from the way I made it the first time I went to this junction; this time I went with Crisp and Stuart and the first time with Stuart; I went down on the creek and
2146 went back and examined for state line trees and others that appeared to be land line corners. We cut into a number of trees, 20 or 30 trees, and examined everything to show whether they were land line marks or state line marks or anything. We could tell by the age what it was with the maps and Crisp had an abundance of land grants or boundary lines,—I could not say whether they were grants or not. We found one, the Harrison tract. We continued to near the junction again and went in again. And the next examination of trees I made was from the Glen Cabin Gap down. We went on a trail down a branch of Slick Rock to near where the North Carolina line is claimed to leave Slick Rock creek and examined carefully a bunch of trees that had marks on them and up from the bank of Slick Rock creek there was a *p*arge tree marked 5 N. the marks were rather recent on it up this marked line claimed by the North Carolina contention and up pretty high on the

ridge leading to Fodder Stack; the timber began to get small and Stuart and I did not discover any marks of importance. And we continued that until we got to the creek, I was there that day, Stuart was not there. We went down the creek that evening too after examining on the ridge and went back to Slick Rock toward the falls and then went out. That completes my examination in there. We boxed a number that evening as we had been doing every day whoever was with me. The next day we went on the Hang Over and examined there for land lines. I made some bearings and found Hale's map very satisfactory and it appeared that the different ridges and streams and topography were located accurately on it. I took bearings from Hang Over and the top of the Smokey Mountain and continued out to Stratton Bald. I took observations and checked them as to elevation and direction and afterwards applied those bearings on Hale's map and found in this triangulation system it located the knobs as he had them and satisfied me with his measurements being accurate and correct. And in all these trips I looked at the ridges in every direction looking for some main ridge or line they would select in coming — the Smokey Mountain on that state line survey and I got an accurate idea of the different ridges and streams in sight, both in the Fodder Stack and Stratton Bald and Smokey Mountain side, and Hang Over. I had a very clear im-
2147 pression of the topography of that country.

Q. 31. Have you completed the investigation?

A. Mr. Crisp and I continued afterwards from the junction south along the undisputed state line ridge for a mile or so and found marks. We examined them and that completed my examination of that. I did make some observations with an instrument in regard to the 9th district line and afterwards near Robertsville and that completed my trips there.

Q. 32. State whether or not you thoroughly examined the topography of the country?

A. I did.

Q. 33. And the different lines and so on?

A. Yes sir.

Q. 34. Please state the topography as it appeared to you approaching the Tennessee river from the north side on both your right and left hand and also what you saw in front?

A. Well I was looking for a main ridge that was one main idea I had in mind looking for the state line there and in looking from the Smokey Mountain side it appeared to me that the Hang Over ridge was both high and bigger than any other ridge in front of me coming south.

Q. 35. What about the ridges to your right and left as you went that way?

A. There were ridges plainly in view to the right but in looking southwest that curve showed no gaps in it; the other you could see through you could look through to sky-light; and the other was massed up more, and very broad ridges ran east towards the Cheoee and Santeelah side; and the other I could see through gaps in it across there; it did not appear to be as big or high; and I noticed

that afterwards in going from Hang Over to the bald for several miles out there.

Q. 36. What ridge is that to your right with the low gaps?

A. Fodder Stack and Stiff Knee; it laid sideways to me and I could see it; and it was further off and not so broad. These ridges out the other way held up on the map 3000 or 4000 feet towards the Cheoee River and looked broad; the other came back into that curve with gaps in it. I could not get it into my mind that it was the main ridge.

2148 Q. 37. What map do you refer to?

A. The United States Geological map. I could see the ridges distinctly, one from Hang Over and the other from Cold Spring towards Cheoee mouth.

Q. 38. So the United States map and your personal observation showed Hang Over the prominent ridge?

A. The biggest and highest; and I noticed one peculiarity about it,—from Stratton Bald the streams ran decidedly east then north, then west to get around; they seemed to break away from this mountain and you see they finally turned west; they went in an opposite direction for awhile as if breaking away from the watershed; and the other streams did not make such a circuitous route; that seemed to be a more distinct water-shed; I did not go all the way but I had maps and I could see quite a ways too.

Adjournment until 1:30 P. M.

The further taking of these depositions was resumed pursuant to adjournment at 1:30 P. M. Jan. 7, 1911.

Examination of H. M. KENT continued by defendant.

By Maj. McCROSKEY:

Q. 39. State whether or not you examined the marked trees up Slick Rock Creek and the ridge running from Slick Rock to Fodder Stack; also north of the river and elsewhere, and if you boxed any? State now fully all the examination you made and what character of examination you made, and where?

A. Just suggest one side or the other to start on.

Q. 40. Begin on the north of the river?

A. We boxed several trees north of the river on the Smoky Mountain side; we found one that the age and character of marks showed it plainly a state line mark; I saw some others I thought were state line at first,—and then——

Q. 41. How many did you block on that side?

A. Three or four.

Q. 42. Only one you found to be of sufficient age?

A. Yes, and character of marks.

Q. 43. What age and character were the marks on the block you took on the other trees?

2149 A. One was hacks,—three hacks—64 years old; that was on the ridge leading from near the lone pine towards the Cheoee; and the other was up nearer towards the Smoky Mountain

north of that; it counted 89 years, annular marks, three plain hacks; that was on the state line ridge as claimed and showed to be by its age and marks.

Q. 44. That is two; did you block any others on the north of the river?

A. I think one before I got to the spruce pine; it appeared to be a land line, it was on what is known as the State Line Ridge about half way from Pine Knob to the river.

Q. 45. What examination did you make up Slick Rock Creek; what kind and character and what did you find as the result of blocking?

A. We examined a lot that had been blocked; one they cut into 90 years old; a large spruce pine; it had been cut to it, and away from it, showing they passed it in their survey; it had been chopped in 90 years; you could count 90 rings; and the heart was rounded that way (indicating) it had been cut out a year or two; there was no ax mark in it then but it had been cut out; we found several trees in this lot some on this Slick Rock Creek near to the mouth that had marks on that were not just right for state line marks; they were not old enough; we boxed one on the very bank of the creek a spruce pine but found no ax mark in it, though Stuart and Crisp thought it might be a state line tree, but we found a little hack; and above the falls up near where they claim the state line leaves the creek, we turned west and to the right up the ridge to Fodder Stack and we found five or six trees that we boxed and Crisp and I found most of them only 53 years old, the hacks we found on the trees.

Q. 46. That ridge is below the mouth of Little Slick Rock?

A. No, above Little Slick Rock; we went on that ridge a ways. I boxed several; this hemlock right near where it turns on the ridge is boxed, we boxed it and counted 87 years, three hacks. Further on the ridge that leads to Fodder Stack we boxed two or three trees but none of them counted anything like 80 years, most of them about 53 years. It is possible we got one apparently some older but
2150 could not make anything out of it, it did not tally with anything. That carried us as far as any timber of any size towards Fodder Stack. We boxed a number of trees between the top of Fodder Stack and the junction and examined a number more. Some had been boxed. All we examined as far as Glen Gap showed to be young. Out there at Glen Gap we found a tree on the side of the ridge that had been boxed deep. Between Glen Gap and the junction we boxed three or four, one was a big hemlock, it had an axe scar on the inside 87 years old, it did not appear to be hack nor a blaze to me. I boxed one side and Crisp boxed the other side. He said it was doty and he could not tell about the marks. The chip he brought around was doty and worm eaten and we could not see. We boxed two or three more further south of that towards the junction, they counted 53 and a few 50 years and some 35 years and of various characters. We wanted to see what they were. Some one boxed about 15 years ago quite a number. I boxed some on Hang Over too. The oldest we boxed there was 120 years distinctly. I counted 123 years, it was near Sourwood Gap, practically in the

gap. We could see a blaze and thought there might be an ax mark on the inside but we didn't find it. We boxed several that were 35 years and one or two less. One about 15 years seemed to have pointer marks, land line marks or something like that. That country had been all hacked up.

Q. 47. Going back to Fodder Stack did you block a tree there near a clearing?

A. I don't recall that. Do you mean south of Fodder Stack?

Q. 48. Yes.

A. That boxed tree is not on the clearing, there is no clearing in the gap.

Q. 49. The copy you had of Burns' map did it show the location of the trees he marked?

A. It seemed to.

Q. 50. Did you try to find them?

A. Yes sir.

Q. 51. Did you find some?

A. Yes Stuart had been there and was pretty familiar with them.

2151 Q. 52. Those you did find were they state line marks or not in your opinion?

A. I don't think they were, they didn't count right, the only one that came near lacked two years of counting, the one we counted was 89, we all agreed it was one, but the other was a difference I could not account for.

Q. 53. The marks you did find did they indicate continuous lines or promiscuous marking on both sides?

A. There seemed to be a number of continuous lines there and land corners.

Q. 54. Did they face land lines or were they straight lines?

A. Land lines.

Q. 55. Most of these trees you found marked as indicated on Burns' map did they indicate land lines?

A. Some of them I could not tell, there are a lot I could not identify them near all, but a lot he has marked along where he has the state line mark we found three and some we counted 53 and we boxed them right at that place and they will show they were taken for state line trees and they were all right plain and we could not find any old enough and I told Stuart and Crisp if they found anything that looked old enough to say so and cut it and we cut a number at that place and examined anything we thought was old enough and as I tell you there are two trees we found, one on the Smokey Mountain side and one at Sourwood Gap that counted more than that.

Q. 56. After your thorough investigation as detailed by you being aided by the maps you have containing the report of the Commissioners locating the line and the map of 1821 and from all of that where do you say they located the line immediately south of the Tennessee river and continuing for ten miles on?

A. It seemed to me taking the report and the maps and papers I had in regard to it starting at the hemlock which was the admitted line on the north bank of the river,—the most reasonable and prob-

able route appeared to cross the river and to the top of Hang
2152 Over and follow it around to the junction.

Q. 57. Describe the relative height and location of the line as claimed by Tennessee and the relative height and location of the line as claimed by North Carolina from the hemlock to Slick Rock and up Slick Rock creek? Explain how it appeared to you?

A. One main call from the Tennessee river is from the Tennessee river to the main ridge and along the extreme heights thereof and the map indicated that most of that distance out to the junction was along the top of that ridge, taking that call together with the map and the fact that the report clearly said the ridges and extreme heights of same, it looked decidedly as it started at the hemlock and going down the river a half a mile you were not on the ridge you were in low ground; but going straight across the river you begin to rise, following the next half mile toward Hang Over; and the next half mile you continue to rise until you are out about six miles where it is quite high and prominent. Starting the other way and going a half a mile you get to the mouth of Slick Rock, and going another half mile it is still lower then the other line and at the end of five miles up the creek and a half mile down the river,—none of that line could compare at all in height as inferred from that description, with the Hang Over line. With the Hang Over line you are following up the height on that line and in the other you are with the creek and on the lowest ground so far. Then after the six miles comparing it again and from the Hang Over to the junction is a very continued ridge and there are no low gaps. The elevation is a table uniform and prominent mountain and higher than any peak on the other from the Fodder Stack on and including the Fodder Stack; and to my mind comparing the two lines that way one could be considered with the main ridge and extreme heights thereof and the other would not to my mind fill that description, you are following the creek in place of the ridge and would not be following the heights of the main ridge, because after you get the six miles the main ridge is unquestionably on the Hang Over side. Those are the two lines it settled down to after eliminating other things not
claimed by anybody to be the state line. The comparison so
2153 near filling that call of the report on one side, and so far from
it on the other, I could not arrive at a conclusion that it went up the creek under that kind of a call.

Q. 58. You say Hang Over from Hang Over to the junction is higher than Fodder Stack ridge,—how much?

A. It would average quite a lot, may be 1000 feet higher on an average. I suppose isolated peaks, like Fodder Stack, would come within 600 feet of the other but you can see a difference, there are a number of low gaps on the Fodder Stack side and at the junction you have to come over Stratton Bald over a meadow or field or a farm it looks like and when you get opposite the junction the other ridge drops into the woods and does not look like the other ridge, it does not impress one like the other as being the main ridge or extreme height. The Hang Over is something like 800 feet, though I am not sure about it higher than Fodder Stack,—Big Fodder Stack,—as shown on the map.

Q. 59. Take the map of 1821 which says it is on a scale of 800 poles or 2½ miles to the inch,—you have examined it?

A. Yes, I have a copy of it and studied it with a view to determine these lines and I could not see that I did any better than the other man who tried it did.

Q. 60. Following the ridge, any of those ridges by the creek, is the line straight or continually changing course on the top of the ridges or up Slick Rock creek?

A. It changes generally. There might be stretches here and there but it is a crooked ridge and so is the creek.

Q. 61. In any place could you find the line to where there is a tangent or straight line a quarter of a mile?

A. I thought on Stratton Bald there were places you might, there were stretches where it was grassy and the timber cleared away and you could see the top; but the other most of it was crooked they had difficulty going up the creek and following it and making headway they would cut across a bend to get a straight line to run it, they would have trouble in locating the line up Slick Rock. Surveyors have been there and tried it evidently.

2154 Q. 62. Was it necessary to take short measurements in running on the top of the ridges?

A. It would be to get it accurate.

Q. 63. Take the running of the map of 800 poles to the inch with the lines on the map here, explain how it can be made accurate or where they would deviate. Explain in your own way as a surveyor?

A. In looking at the map I was puzzled how they could get along following the top of the ridges as indicated on the map the length they have them indicated to have been marked there and get a straight line on the top of the ridges. I could not see how it was done and after going on the ground I don't think they did it that way. If they sighted from peak to peak to get a straight line for the distance on the map, it does not appear they would get the measurement correct. They could not and follow the ridges because they wind around and the report and map indicates they did follow it then they must have reported through the surveyor longer measurements following the deviation of the ridge then he would find if he measured straight when he sighted. Taking the straight sides to get the running of the short calls, they would accumulate errors if they measured the top of the ridges which it calls for, and I think they did it that way.

Q. 64. How would those errors creep into the map, explain?

A. I would like to make one other statement. In studying over the measurements there in the report as given and the marks on the map and hearing the testimony in regard to it it seems to me that there was certainly indication that the early measurements were taken crooked, for instance, in measuring from the 59th mile tree to the river it seemed to me from the testimony here they made it about 64½ miles and the call in the report crossing the river at 65, looks like it bears out the contention of the original measurement being crooked and it would pull the mile tree back from what it is

on the map if you stretched it out straight each time. And the tendency of that it appeared to me if he went to apply the measurement to the ground by running a straight line from the 59th
2155 tree as indicated on the map and getting a little over the ridge as you run south and west the tendency would be to stretch the new positions toward the south and west and that might account for the fact that some of the surveyors seemed inclined to run over that way in coming on. Burns, for instance, in these lines would carry him there, but did not get him on the ridge, it got him on the creek it looked like, he had to jump a half a mile to get there at the river.

Q. 65. Starting the line and accumulating the errors they would bear to the right?

A. Yes, the longer you make it the further it reaches over each time.

Q. 66. The error would carry you to the right?

A. Yes and across the river that way at apparently shorter distance than named in the report.

Q. 67. Speaking of the measurement of Burns and others. Did you measure any lines, and if not why?

A. No. Because in the bearings I took and applied to the points on Hale's and Burns' maps they seemed to be all right the direction from knob to knob seemed to be all right and from another point located it practically as he had so I was satisfied he made careful survey and it was superfluous to remeasure it. I didn't expect to find any important differences.

Q. 68. You assumed the measurements by Hale and Burns were correct?

A. Yes I thought so practically.

Q. 69. You acted upon that assumption?

A. Yes sir.

Q. 70. You had their maps before you in making up your opinion?

A. Yes sir.

Q. 71. Did you observe the Ch-oee River in any of your examinations north of the river and if so what?

A. I could see Cheoee falls and on the river one day looking around.

Q. 72. From the topography of the river especially at the lone pine state whether or not Cheoee river would indicate the "creek" marked on the map? What impression did it make on you if any?

2156 A. The thing that impressed me most was a long winding ridge leading towards Cheoee more prominent than the one general bald, the state line ridge, and it stands pretty high and goes straight off and drops down, the ridge that leads out past Hang Over, and in shape looked as if it might conform to the shape of the one on the map. With that main ridge terminating close to, and just below the mouth of Ch-oee river. I did not go right up the river to it but we went up on it more than half a mile east of the hemlock or spruce pine and it flattens off next to the river and you

could go this way off the end of it and get to the river. But there is a ridge that leads to the Cold spring on the opposite side of the river.

Q. 73. Then the one leading from the lone pine toward the river spraggles out?

A. Yes, flattens out, it is broad and high and the river cuts the end of it off.

Q. 74. How much below the mouth of Cheoee river where it flattens out?

A. I didn't go to see but it must be more than half a mile from the mouth where we crossed it.

Q. 75. Did you ever see a map,—an official map of North Carolina made in 1837 showing the location of the state line south of the river?

A. I saw a certified copy of the district map of the Cheoee district of 1837 purporting to show the land between the mouth of Cheoee and Tennessee river and the state line. Yes I had a copy of it.

Q. 76. From the Tennessee River going south what did it indicate, going up the stream or the ridge?

A. On the ridge all the way from the map.

Mr. MATTHEWS: We object unless the map is produced.

Q. 77. Was that an official map or not, of Cherokee County, N. C.?

A. It was a certified copy of the District map, on file in the Secretary's office in Raleigh, N. C.

Q. 78. Was it certified?

A. Yes by the Secretary of State.

Q. 79. Was it or not only part of Cherokee County?

2157 A. Yes sir.

Mr. MATTHEWS: We object to this testimony unless the map is produced or a certified copy of it.

Q. 80. You spoke of a tree being marked that was 120 years old; is it on the path or trail, or in the woods?

A. On the ridge near the gap known as Sourwood Gap and seemed to have been a little camping place there; there was a spring there; and forty yards east of the gap; there was no trail there but it had been.

Q. 81. Was the tree near the trail?

A. Yes by the trail that turned from Slick Rock Creek.

Q. 82. Was it on the trail?

A. Well ten steps off of it.

Q. 83. Did you examine the line beyond the junction going southwest?

A. Yes about a mile and a half.

Q. 84. What did you find with reference to state line marks?

A. There were some trees marked along there.

Q. 85. Did you block any?

A. Not the day we were there, I had one blocked afterwards, I don't know whether it is competent to tell it or not. I paid a man to do it, Mr. Stuart.

Q. 86. Did you recognize them as state line marks?

A. I did not, I was satisfied they were not.

Q. 87. You found nothing beyond the junction you recognized as state line marks?

A. Crisp and I looked carefully; we found marks but either the shape or age were not right. We had boxed enough by that time to tell when we cut into it. And we decided we found none that we could call state line marks, they were very scarce.

Q. 88. From your investigation for 12 or 15 miles what in your opinion is the number of trees to be found along the true line on each mile that are true state line marks?

A. We found one that I am confident was a state line tree that we boxed. We found a center tree almost in reach of it. I was
2158 satisfied from the looks of it, it must be a center line tree but it seemed worth while to preserve some of them and so after that we did not box the hemlock at the river it had been boxed on one side and looked rather like we should not cut out the other marks they might be useful hereafter; there might be a lot of contention there anyway and I do not believe I saw another original state line tree on the line; I saw trees some people might think there were state line marks on; but they are very scarce. I heard Mr. Williams testify and he is in line with my conviction that they are very scarce, the state line trees are. All the trees that were cut into are proved.

Q. 89. Crisp states that after you and he had been there investigating this line, he uses this language: "we made out by that the line ran up Slick Rock Creek." State whether or not it is true?

A. I did not think it ran up Slick Rock Creek.

Q. 90. Did you state anything of that kind to him?

A. No sir.

Q. He states north of the river evidently in order to disprove your investigation, that you sighted with a stick back and forth to see how the line ran?

A. That of itself is queer that we would sight. In fact I did not find a place on the north side I could see those ridges enough to tell the general direction on the other side. I sighted from Fodder stack and when we got to Hang Over I called attention to the fact that some of the longer ridge*d* pointed to Hang Over and some of the ridges nearer the top of the Smokey Mountain pointed to the east of Hang Over. But on the other side it would be foolish to talk about sighting because the knobs between us was so high you couldn't see enough to tell. You might see 100 yards and reach a point one way at one time and another at another time. I have no recollection,—no I know I did not sight on that side. I could not determine from that side how the ridge back of me pointed. I could see very well in front, but to point backward where I could not see would be foolishness and of no consequence. I could not see back far enough while on that side. But on the other side you could see very dis-
tinctly and we did point from Fodder Stack and Hang Over
2159 and the Bald and I called his attention to that, you could see from one point to another and you can verify it and the map

shows it. You can put a straight edge on it. But the other one will point one way at one time and another at another time. And when I was on the north side I could not see backward.

Q. 91. State whether or not you saw creeks other than Slick Rock paralleling or near the line and if so what and describe them?

A. Looking at the topography of the country and asking questions of the people there as to their names I noticed a creek side of the state line ridge coming off the Smokey Mountain that extended back towards the foot of the Smokey Mountain and I asked its name and they said it was Rabbit Creek. There was one on the east I could see from Hang Over, they call it Bear Creek. I noticed Rabbit Creek for this reason: There was quite a high ridge left Smokey Mountain near the top and ran out west and when I first went there it looked to me like it might possibly be construed to be a main ridge and catch the end of that Salt Knob Ridge and bring the line up that way, but the more I looked at this creek it seemed to entercept and pushed it back. It went so far back I clearly decided the line could not have come that way. Dave Orr thought it went that way, but Rabbit Creek pushes it back. You can see that by the bend in the river, it makes back into those depressions and the lowest ground is on the west side and this creek is the drain for that, is why I noticed. The ridge looked so far back they would not come back around so far as this main looking ridge, it was so far out of any direction that I discarded it.

Q. 92. How far is Rabbit Creek from the main, true line north of the river?

A. I did not go down.

Q. 93. Is it in plain view?

A. There are tributaries coming to it like Williams said.

Q. 94. Is it in plain view?

A. No, you can see better from the Hang Over side.

Q. 95. How far is the gorge of the creek from the top of the mountain?

A. In places a mile or so. It shuts that ridge back there.

2160 Cross-examination.

By Mr. MATTHEWS:

Q. 96. Is that ridge called Lester Ridge?

A. Possibly, they didn't tell me, it runs west of the Smokey ridge.

Q. 97. How far back of the river north does it strike off?

A. Near the top of the mountain.

Q. 98. There is another ridge called Lester Ridge that is nearer the Tennessee River?

A. I don't know the name, it is a little piny ridge; after we left the lone pine and got on the state line it came down a ways towards the river and Stuart was guiding us to the hemlock, we turned a little more to the right which must be the ridge you describe and got in the bend below the mouth of Slick Rock and discovered it was too low to hit the hemlock and it is a little piney ridge and there were no marks on it. We found no marks there. The way I found we

were off was that we were not following the marks and we went back on it and came down this ridge to the hemlock, following the marks again. We must have been on Lester ridge then.

Q. 99. That strikes the Tennessee river below Slick Rock.

A. Yes sir.

Q. 100. This other ridge a little north of that might be the main ridge?

A. No, it was northwest of that at the head of Rabbit Creek.

Q. 101. Yes, that is the one you thought it might be the main ridge?

A. Yes at first, but after I noticed the length of the creek I knew it could not be the main ridge.

Q. 102. Do you know where the lone pine is?

A. I know there is a turn where the higher ridge makes out to the river as we went up then from the mouth of Cheoee up the Smokey Mountain ridge we did not know where the state line ridge came to it, it was inconspicuous at that place, and we found a pine tree and there were marks on it and I know we were about the 64 mile place back from the distance I had gone from the river, and I heard Mr. Williams testify the way he examined to this junction, and the distance, and I am satisfied it is the same point.

Q. 103. Do you know where Parson's Bald is?

2161 A. No I don't know one bald from the other; I took the most prominent ones.

Q. 104. Do you not know by having it mentioned?

A. I have been told but there is two balds there, I don't know which is which.

Q. 105. Is there Parson's Bald and Gregory's Bald?

A. I cannot recollect, I think Parson's is the south one but I am not sure.

Q. 106. How far back of this lone pine is that?

A. Must be several miles, the lone pine would be 64 miles and that would be 58.

Q. 107. Where was it with reference to the lone pine you stopped with Crisp and looked across the river?

A. We cut into the tree just before we got to the junction.

Q. 108. Where is the spot you cannot look back?

A. You cannot see any distance as soon as you turn into the spurs towards the Tennessee river.

Q. 109. From the lone pine can you see back?

A. Some ridges but not much.

Q. 110. Can you see the big tops?

A. Some of them.

Q. 111. Can you see Parson's Bald and Gregory's Bald?

A. I don't think you can see both from anywhere on that side. I have not been there but they are both high and you are soon under the front and I did not see but one Bald.

Q. 112. Then Parson's would be the first one if you were further south?

A. I think it is the one further south.

Q. 113. Do you know whether from the lone pine you can see Parson's Bald?

A. Not positively.

Q. 114. You think it is back as far as the 58th mile circle?

A. I have been told so.

Q. 115. If from the lone pine Parson's Bald can be seen by looking back, were you in fact at the place you could not see back
2162 far enough to take a sight?

A. I could see a few ridges all the time, but it is timbered there and some of the knobs were high and some low and it bothered me to tell whether I could really see the top of the Bald or not, because when I was on the south of the river I could see different balds pretty high approaching to the highest one, but when you get where it drops off; it is easy to mistake one of these peaks for the main one.

Q. 116. If Mr. Williams could stand at the lone pine and sight Parson's knob you could?

A. If he could I could but I don't know whether he could. There was always some doubt whether I was seeing the real bald top or some other top. I noticed frequently as I would go further I could see other knobs higher that I had not noticed.

Q. 117. You did not in fact have an instrument with you?

A. I did part of the time but not over there.

Q. 118. You say it is not true that you took a straight stick and a general direction of the mountain back of you by sighting with it on the Smokey Mountain ridge?

A. That is not true.

Q. 119. And it is not true that you turned around then with that same stick and sighted a line to see where it would strike on the south side?

A. I would not turn around.

Q. 120. I am not asking what you would do, I am asking whether it is true you did it or not?

A. I did not take a stick and sight back the main line of the mountain.

Q. 121. Or across towards Fodder stack?

A. Yes, I probably did.

Q. 122. What did you do it with, were you looking or sighting something?

A. I sighted with a stick very often in walking and I pointed to knobs and peaks and I am sure on the Fidder stack. I held the stick in line towards the mountain and we talked about the fact that certain ridges came from the main top, they would come this way, and that way, and we would get in line with one portion here,
2163 and then some over here would point this way (indicating). You could see them plainly, the line must be zigzag. You would have had a thousand directions if you had pointed down all of them that way. But from the other side there were stretches you could look across from Hang Over and Fodder Stack. We just went two miles from the river on that side until we found this state line tree and it does not carry you to the top.

Q. 123. You did sight some line on the Smokey Mountain and tried to carry it across the river and see where it would strike?

A. I do not remember any particular place I sighted and came to a conclusion.

Q. 124. I am not asking for a conclusion. Didn't you sight some line on the north side and carry it across the river and didn't it strike Fodder Stack?

A. I may have sighted and probably did some short distances as I have said before and some of them would point toward Fodder stack.

Q. 125. But it was not the line from the lone pine as far back as that peak?

A. No sir.

Q. 126. Getting the general direction to the peak?

A. No sir.

Q. 127. It was not that line?

A. No sir.

Q. 128. But some line you saw did furnish a direct line to the Fodder Stack?

A. Yes some of those ridges; and some would go to Hang Over and some to even west of Fodder Stack.—I noticed that.

Q. 129. With regard to the Cheoee River ridge how far did I understand you, or did you say that goes off from what you call Hang Over?

A. About the Cold Spring Knob.

Q. 130. How far is that from the Tennessee River?

A. 2 or 3 miles.

Q. 131. Isn't it four miles?

A. Possibly so; the map will show.

Q. 132. That in your estimate is more of a main ridge than
2164 Hang Over is, in that four miles?

A. The Cold Spring Knob is the highest knob you strike between there and the river.

Q. 133. I am not asking about the knobs, but about the ridge as a whole from that point towards, or down to about the mouth of Cheoee River,—isn't it more of a main ridge than the part that leads up directly from the hemlock to the Hang Over ridge, in that four miles?

A. For a part of it, it is; for a mile or two east it is higher than towards the river further; it is up the river, but down the creek; they may get high towards the river; it is more than a mile apart.

Q. 134. Is that cold Spring Knob on the main Hang Over ridge?

A. Yes I know Fat Gap; I don't know all of them.

Q. 135. How far from Hang Over peak is it?

A. I don't know.

Q. 136. Hang Over peak is about six miles from the river?

A. That is what I understand.

Q. 137. Is that ridge you speak of as the Cheoee River Ridge one that runs almost due east?

A. It makes out near the Cold Spring Knob towards the mouth of Cheoee.

Q. 138. When speaking of relative altitudes of the Fodder stacks and the Hang Over, did you include both big and little Fodder stack in making comparison?

A. Yes I looked at them.

Q. 139. In making comparison did you use the Hang Over Ridge and those ridges towards the river, or did you include the Cheoee in making altitudes on that side?

A. Only those towards the Tennessee.

Q. 140. Of Hang Over?

A. Yes sir.

Q. 141. Isn't it fact that from Hang Over to Tennessee River it goes down gradually?

A. Yes sir.

Q. 142. Is it very much broken?

2165 A. Yes considerably.

Q. 143. Is it a fact that you mean the average height in those 6 miles is greater and more of a ridge and less broken than the average height and character of the ridge of Little Fodder Stack and Big Fodder Stack for those six miles?

A. I didn't compare it that way.

Q. 144. How did you?

A. The first six miles from the hemlock towards Hang Over following the lead you call the low lead by the Cold Spring Knob is higher every foot for six miles than the line contended by North Carolina.

Q. 145. I am talking about an earlier part of your testimony?

A. I have to make that comparison of the two places; there are ridges higher but not in consideration.

Q. 146. That was in the latter part of your testimony; but in the earlier part you compared the Fodder Stack with Hang Over?

A. Yes.

Q. 147. The question is whether or not you mean to say from Hang Over peak down to the river, or from that 4 miles down to the river, that it is less broken and an average higher range than the big and little Fodder Stack for the 4 or 6 miles they run to the river?

A. I don't understand what you call "they run from the river"?

Q. 148. Take the distance of Big Fodder Stack and Little Fodder Stack for 6 miles below the river?

A. Towards or from?

Q. 149. It doesn't make any difference if you are going southwest it is over the same mountain; I mean the altitude it is the same whichever direction you go?

A. Yes but the altitude of the ridge would not be the same because it rises one way.

Q. 150. Take the six miles as a whole of the Little and Big Fodder Stack just south of the Tennessee River, and compare it with the six miles of Hang Over south of the Tennessee River,—do you

2166 mean in that six miles the Hang Over is less broken and the higher average ridge than the Little Fodder Stack and Big Fodder Stack?

A. If you start north of Hang Over and go to the river and then start on Big Fodder Stack and work around Salt Spring Knob quite a distance from the creek, or the place said to be the line——

Q. 151. Which of the two ranges——

A. (Interrupting.) It might be in favor of the Little Fodder Stack; but I didn't understand it that way. In comparison with this ridge.

Q. 152. Which of the two ranges of mountains I am talking about?

A. I didn't know where they were.

Q. 153. You know Little Fodder Stack?

A. Yes.

Q. 154. Do you know a point six miles from the river?

A. Not that way.

Maj. McCroskey: I think you misunderstood the question put to the witness a while ago.

A. I think I can get you to see when I say it is more than six miles from the mouth of Slick Rock Creek to Fodder Stack.

Q. 155. I will state the question this way: For the last several miles of Hang Over Ridge taking about the same mileage on the Litt*h*e and Big Fodder Stacks do you mean that Hang Over is less broken and a higher ridge on the average than the Big Fodder Stack and Little Fodder Stack?

A. Take the distance from Big to Little Fodder Stack including intervening gaps and ridges,—and take the same distance in the Cold Spring Knob to Fodder Stack would be the highest, but I don't know how far it reaches. There is a prominent ridge there, but I could not consider it as the line at all. I saw reasons why it could not be the line.

Q. 156. I am asking you to compare two ridges of mountains, it might be the Alleghanies and the Rockies for that matter? How long were you doing this?

A. My recollection is we left home on the 16th of May and got home on the 5th of June: we were a day or two getting to Asheville and up there and we didn't put in all the time. It rained a
2167 day or two and we stayed in the house.

Q. 157. How much time were you on the ground actually looking it over?

A. Something more than two weeks, looking at the ground and the papers and boxing trees and making examinations.

Q. 158. Did you make report to the Babcock people?

A. No, I don't know yet who had me there. Mr. Shields asked me.

Q. 159. Did you understand who he wanted it for? Was it the Babcock Lumber Company?

A. No, he didn't tell me.

Q. 160. Was it for the Smokey Mountain Land & Lumber Improvement Co.?

A. Yes the first time I was up in Philadelphia making report on the Morse property and Mr. Shields and Mr. Peck intimated they might employ me.

Q. 161. And they afterwards did?

A. Yes sir.

Q. 162. Did you have a warrant from Hebard to the Smokey Mountain Land & Lumber Improvement Co.?

A. No deed, no sir.

Q. 163. You knew where their land laid?

A. No sir.

Q. 164. Did they tell you where it was?

A. No sir.

Q. 165. Why didn't you make report to them?

A. I did to Mr. Shields.

Q. 166. Did you report to him it went over to Hang Over?

A. I reported to him what I found.

Q. 167. Did you give any opinion as to where the State line ran south of the river?

A. I reported my findings there and have talked to him since.

Q. 168. Did your findings include the location of the state line south of the river?

A. I wrote my opinion, yes.

Q. 169. Did you report that it went off Hang Over?

2168 A. I think I told him I thought so.

Q. 170. Do you remember what you reported?

A. Not absolutely.

Q. 171. That was in May of what year?

A. After that I reported to him.

Q. 172. When?

A. In June some time.

Q. 173. In June, 1910?

A. Yes sir.

Q. 174. And you don't remember what you reported? Or that you reported to him that it went off the Hang Over or whether it went up Slick Rock?

A. I reported my opinion.

Q. 175. What was it?

A. That in coming to the hemlock my conclusion was it would follow the main ridge and I considered the Hang Over the main ridge and it would go down that way is my impression about it and that I must have reported that and that is what I found and I reported what I found in the way of trees in detail.

Q. 176. You didn't tell Crisp your opinion that it was up Slick Rock?

A. No sir.

Q. 177. Was Stuart along?

A. All except the last day. Crisp was not along all the time. Stuart and I were there first and Andy Orr was there some.

Q. 178. Didn't you tell Crisp it was up Slick Rock?

A. No sir.

Q. 179. When you were looking over the ground in May or June, 1910?

A. No sir.

Q. 180. What did you do the last day that you say Stuart was not with you?

A. Crisp and I went back. We went from Glen Cabin Gap out towards the junction; and Stuart's road was nearer home across from the junction and I had the examination of the Hang Over line to make from opposite Orr's around to Stratton Bald, and to the south end of Hang Over and I let Stuart go home and Crisp and I went the next morning. We did not stay at Orr's that night but
2169 stayed with a man on Slick Rock, it was the only clearing there that I saw; and the next morning we went from his house south and made final examination to the junction and went down to Stuart's house again.

Q. 181. Didn't Crisp show you a lot of North Carolina entries calling for Slick Rock Creek?

A. Yes sir.

Q. 182. Where were you educated?

A. At the University of North Carolina.

Q. 183. What course did you take?

A. English.—and optional course.

Q. 184. What is that?

A. You could take any course in English and not get an A. B. you had a certain course to take.

Q. 185. What did you do?

A. I studied Political Economy.

Q. 186. How much mathematics?

A. I didn't graduate in any course. I studied the regular mathematical course for more than a year.

Q. 187. How high did you go?

A. In Geometry and all that sort of thing.

Q. 188. Did you study trigonometry?

A. Not a great deal.

Q. 189. Did you study analytical geometry?

A. Yes and plain trigonometry, latitudes and departures and that sort of thing.

Q. 190. You spent a year at it?

A. Yes, I studied surveying under M. A. Barnett, and A. B. of one of the northern colleges at the Finley School.

Q. 191. Was that prior to studying trigonometry and analytical geometry?

A. Yes sir.

Q. 192. Did you ever study the doctrine of co-ordinance?

A. Not in school.

Q. 193. Have you since?

2170 A. Yes some.

Q. 194. Define what a co-ordinate is?

A. That comes in tangents and cotangents in plain trigonometry.

Q. 195. You think so?

A. Yes, co-ordinates and tangents and cotangents.

Q. 196. They use them in calculation of co-ordinates?

A. Yes and vice versa.

Q. 197. That is your recollection?

A. Yes you take angles and take the sides and you can calculate them and tangents and cotangents.

Q. 198. What is the tangent of an angle?

A. One of the straight lines.

Q. 199. Which?

A. Either is a tangent whichever way you go, one of the straight lines that connects an angle.

Q. 200. How would you express the tangent of an angle, suppose you have a right angle triangle, how would you express the tangent?

A. The tangents I am familiar with from practical use, for instance, in running a railroad line and you can't take time to run a curvature you run an angle and when you locate it you start back from the angle a given distance and you take it on a tangent and you get another straight line or tangent.

Q. 201. I understand, and as General Cates says anything that runs off from a circle in a straight line. Now what in trigonometry is the tangent of an angle? How do you express the measurement of an angle through its tangent?

A. "Tan" stands for tangent in the abbreviations.

Q. 202. Did you ever know it as the opposite side of an angle divided by the adjacent side?

A. I don't know.

Q. 203. You never heard it that way?

A. No, I don't say that.

Q. 204. Where did you say you worked for the Government?

2171 A. Yes sir.

Q. 205. Where?

A. In Alabama on the Coosa River.

Q. 206. What were they doing there?

A. They wanted a survey to see about making locks and I ran down one side and took the topography along the river and of the mountains, they were going to have to build locks and dam and wanted to know how much land it would flood and I used a transit with vertical arches and horizontals and took the distances, and had to go on top of the ridges and show where it would stop, and on the foot of the hills.

Q. 207. Who had charge of that?

A. A man from Mobile.

Q. 208. Was he an Army officer of Civil engineer?

A. He was a Civil engineer and reported to an Army officer in Washington. He had charge and I was one of the transit men.

Q. 209. You were one of the transit men, one of the two?

A. Yes I ran the east side.

Q. 210. You never studied astronomy?

A. No, I have read it but never studied it,—the spherical part, I was not much interested in.

Q. 211. Do you know the doctrine of triangulation?

A. Yes, plain triangulation.

Q. 212. Do you know the distance and position of objects inaccessible?

A. Yes in two or three ways, you measure the base line accurately and turn the angles; or you turn the angles to two points and de-

termine the distance between the two points and get the distance and the angle between, and the other two angles you make out, that is one way.

Q. 213. When you speak of accumulation of errors, if you know salient points on a line, those errors could only accumulate between two of those prominent points could they?

A. That is right if you knew positively both points.

Q. 214. Yes, I am speaking of that.

A. Yes.

2172 Q. 215. And if you have to come out at a certain point from another and you don't come, you know you have been committing error or accumulating some?

A. Yes sir.

Q. 216. It is not likely that accumulations would go through a whole line if there were a dozen prominent points?

A. The same method would have to be over the same ground, but you can correct them known or fixed points. They have corrected some looks to me like in this map or on it.

Q. 217. You could correct minor errors by checking on this known point when you came to it could you not?

A. Yes in a measure.

Q. 218. Couldn't you do it pretty close? Suppose you measured around certain lines and got to a certain point and wanted to check by running a straight line,—you would have to use the same method going in a straight line if you had chained it inaccurately, you might get it wrong?

A. Yes a surveyor is liable to errors.

Q. 219. You cannot say one plat is more inaccurate than another?

A. No sir.

Q. 220. People are liable to err?

A. Yes sir.

Q. 221. Did you survey individually any part of these lines?

A. No, no actual survey or measurement.

Q. 222. Did you take any exact distances and bearings on any of them and try to apply it to the ground?

A. Low distances I did.

Q. 223. How?

A. With a compass.

Q. 224. Just a compass?

A. Yes sir.

Q. 225. You took them from Hale's map?

A. I applied them to Hale's map to see how they checked out.

Q. 226. What did you take them from when you went with the compass?

2173 A. I took bearings from the north end of the top of Hang Over to the top of the Smokey Mountain and to Little and Big Fodder Stack and other peaks and when I got over on Hang Over,—I mean the Stratton Bald,—I took bearings from the top of some of these peaks, such as I could see from there, I couldn't see them all, so I couldn't check them all, but those I could see I drew the angles and could see.

Q. 227. Isn't the only accurate way of making the survey of the line especially where it is a difficult line to use the transit and not the compass?

A. Well people differ about that, I have seen many transit men who did not start with the needle at first; when you do that if you happen to have a local attraction it puts it all out.

Q. 228. Did your education enable you to run the true meridian distinguished from the magnetic meridian?

A. Yes sir, the trouble is taking one call with another you could start with the true meridian but it is hard because you have to have a certain time to go by from the polar star or whatever they call it and you might have a watch that was a little wrong if you took observation at the wrong time it would not be correct. We had that to do on Government survey. I did it some nights to check work on the river and it would not show the same latitude and departure so we do that to check up but it depends on how you do it. Then again if you are running with a compass and have a certain line and another fellow ran it and may be it was subject to local attraction it would get you off, it depends on how you are shielded.

Q. 229. The magnetic meridian varies by localities and from time to time?

A. Yes sir.

Q. 230. So if a line were run 50 years ago by magnetic meridian it might be run differently today and each be true according to the magnetic meridian?

A. Yes, and another reason why in practice it is not convenient to carry the true meridian each time,—suppose we were running by the needle, you would be all the time in the woods making calculations, and it is easier to write down and make your calcula-
2174 tions some other time, make your calculation afterwards, after you get the line and make your subtractions when you have time in the office. That is the practical side of it.

Q. 231. How was the meridian taken for the Government?

A. At night.

Q. 232. You took the true meridian?

A. Yes sir.

Q. 233. You saw the map of 1827 of North Carolina?

A. No it was the district map of 1837.

Q. 234. What district?

A. I think the 9th District of Cherokee County.

Q. 235. You say that map laid this line on a ridge?

A. Yes sir.

Q. 236. What ridge?

A. It was marked the main divide or something like that, and purported to be that land on that side of the county west of Robertsville.

Q. 237. How far west?

A. I don't think it stated but to the main ridge, marked main ridge or North Carolina line, on it.

Q. 238. Wasn't it Fodder Stack?

A. No, it just said main ridge.

Q. 239. Was there any river in it like Cheoee?

A. Yes, the Cheoee was in it and Santelah and Snowbird.

Q. 240. You saw a certified copy from the office Secretary of State of North Carolina?

A. Yes sir.

Q. 241. Didn't it show a line going southwest from the river some distance and then going southeast?

A. It showed it going southwest around from the river. I don't recall exactly, it made turns. I don't recall how the turns succeeded each other. It showed on the drawing a ridge clear down to the Tennessee river and not any creek on it.

Q. 242. Did I understand you the block you took out of
2175 the tree on up the ridge to Big Fodder Stack counted 87?

A. Yes a time or two, Crisp and I counted it both.

Q. 243. It could not have been 88 or 89?

A. We counted it more than once, we each had a magnifying glass.

Q. 244. What kind of tree was it?

A. A hemlock, a large tree.

Q. 245. What did you do with those blocks?

A. Expressed them to Mr. Shields in Philadelphia the one in the Smokey Mountain and the one from the Hemlock.

Maj. McCroskey: I forgot to ask about this in chief. And will ask him now.

By Maj. McCroskey:

Q. 246. I ask you to examine this block, Exhibit — to the deposition of Mr. Burns from tree No. 30 on his map, examine the marks on that and state what they indicate to you as a surveyor?

A. (Examining block.) It appears to be four good hacks on the side of the tree, that shows in the wood there.

Q. 247. Do you understand which is the top part of the block and which is the lower?

A. Yes, that is the top (indicating).

Q. 248. The square part is the top?

A. Yes, the way I have it standing.

Q. 249. Does anything on that block indicate a blaze?

A. Right there is a little indication of it and in there (indicating).

Q. 250. What do you mean by "in there"?

A. Further out or at a later date appears to have been blazed.

Q. 251. The older or inside marks, what do they indicate, anything about the blaze or not?

A. No I don't think so, there are four straight hacks, I don't see any indication of a blaze. I mean on the inner mark.

Q. 252. If there is a blaze indicated on the block at all on the outside or within, explain what from the outside would indicate it and where from the inside?

2176 A. The scar on the bark.

Q. 253. Where?

A. The lower end. And there seems to be a scar a little more

than half way in towards the oldest backs on the outside would indicate a blaze made on the wood and it is a subsequent date to the backs.

Q. 254. Inside of where the blaze is indicated below that does it indicate anything like a blaze older or further in the tree?

A. No it is a back.

By Mr. MATTHEWS:

Q. 255. Did you count the age of the two sets of marks?

A. No sir.

Q. 256. Can you do it and report it?

A. I think I can. I will do so and report it. (After counting.) The backs are 89 years old and the blaze is 59 years. There appears to be a little difficulty at that scar but I think that edge would give margin to count through it.

And further saith not.

H. M. KENT.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

Sworn to before me this the 7th day of January 1911.

S. E. CLEAGE,
Clerk Supreme Court of Tennessee.

H. M. Kent:
Witness — days and — miles. $8——.

2177 C. B. MCNABB, next witness called by defendant, State of Tennessee, first duly sworn testified as follows:

Examined by Gen. CATES:

Q. 1. This is C. B. McNabb?

A. Yes sir.

Q. 2. What is your age?

A. Fifty five years.

Q. 3. Where do you live?

A. Newport, Tennessee.

Q. 4. How long have you lived there?

A. Newport and vicinity fifty-five years.

Q. 5. What is your business?

A. I follow surveying.

Q. 6. How long have you followed the avocation or business of surveying?

A. About thirty years.

Q. 7. Did you ever take a course of surveying in any school?

A. Very little. I learned most of mine studying at home and practicing.

Q. 8. How much experience have you had in surveying?

A. I have been engaged in it regularly for the last, something like thirty years.

Q. 9. Have you had any experience in surveying out large tracts or bodies of land?

A. Yes, I surveyed several large bodies.

Q. 10. To what extent have you surveyed land in Cocke County?

A. Probably half the county.

Q. 11. Have you ever held official position in Cocke County?

A. Yes, County Surveyor 16 years.

Q. 12. Is Cocke County bounded by the North Carolina state line?

A. Yes sir.

Q. 13. To what extent have you surveyed in Sevier County bounded on the North Carolina line?

A. All of Sevier County except about 900 poles.

2178 Q. 14. All of the land?

A. Adjoining the state line I surveyed all the state line crossing Sevier County.

Q. 15. And all the land bounded on the state line except 900 poles?

A. Yes sir.

Q. 16. What experience have you had in surveying lands in Greene and Washington Counties north of Cocke County?

A. All the land except one tract across Greene County.

Q. 17. You mean all that bounded on the state line?

A. Yes sir.

Q. 18. Have you surveyed any in Washington County or Unicoi County?

A. No I never did any there.

Q. 19. To what extent have you surveyed land in Blount County on the state line?

A. I surveyed land joining the state line for Blount County from the 31½ mile tree to the 50 mile tree.

Q. 20. I will ask you to state Mr. McNabb whether from your experience in surveying through that country you think you could form an opinion satisfactory to yourself in relation to matters of surveys in the woods?

A. Yes sir.

Q. 21. I will ask you to state to what extent if any have you given attention to the matter of studying marks on trees for the purpose of determining their age and other line marks. Is that an essential part of the practical education of a surveyor?

A. I have had only slight experience as to studying the age of marks.

Q. 22. Well in connection with running lines and surveying tracts of land for 30 years I will ask you to state whether or not in nearly every survey you have had to make, some question has arisen in regard to marking on the trees being line marks, or marks made to indicate the course of lines of surveys?

A. I don't remember any special occasion I ever had to examine closely as to the age of the marks by chopping into trees.

Q. 23. In surveying these lands contiguous to the state line in

Greene and Cocke and Sevier and Blount Counties did you
2179 have occasion to run the state line in connection with them?

A. Yes sir.

Q. 24. Mr. McNabb have you ever noticed any difference in the grants for lands bordering the state line north of the Cataloochee Turnpike and those south of the Cataloochee Turnpike in reference to making calls for courses and distances along the state line?

A. Yes there is a difference.

Q. 25. What?

A. In the grants north of the Cataloochee road the grants all give the course and distance, and I never have seen one south of that point that did give the course and distance—I mean the original old grant.

Q. 26. State if you know who Jacob Peck was?

A. By reputation.

Q. 27. Who was he?

A. He was once Judge of the Supreme Court and his home was about Jefferson City.

Q. 28. In Jefferson County, Tennessee?

A. Yes sir.

Q. 29. Do you know whether or not he was instrumental in taking out a large number of state grants on the state line both north and south of Cataloochee Turnpike?

A. Yes he took out grants for nearly all the land from the Washington County line to the Blount County line.

Q. 30. And into Blount County?

A. Yes sir.

Q 31. Who was John H. L. Peck?

A. I understand he was a son of Jacob Peck.

Q. 32. Are they both dead now?

A. Yes sir.

Q. 33. To illustrate this difference in the calls of grants north and south of Cataloochee Turnpike I requested you a number of days ago to furnish me one of the Peck grants north of the
2180 Cataloochee Turnpike, and another south of the Cataloochee Turnpike—have you secured them?

A. Yes sir.

Q. 34. Where did you get them?

A. In the Land Register's office in Knoxville.

Q. 35. Are these the papers (producing grants)?

A. Yes sir.

Q. 36. One of these purports to be and is certified copy of grant No. 32,539 to Jacob Peck, the date of the grant being April 4, 1838, and based on entry dated June 14, 1830, and beginning where the lines of Greene and Washington County intersect the state line at a marked red oak. Now that grant is for lands on the state line north of Cataloochee Turnpike?

A. Yes sir.

Q. 37. Please file that grant Exhibit No. 1 to your deposition?

A. I so file it.

Q. 38. The other paper you hand me is certified copy of grant

No. 21,636 dated May 28, 1838, from the State of Tennessee to Jacob Peck and Adam Peck and based on entry dated June 10, 1830, in Sevier County Tennessee the description of which begins as follows: "Beginning on the 11th mile tre marked by the Commissioners running the state line, it being the corner of Sevier and Cocke Counties on the divide of the waters of Little Pigeon from those of Crosby Creek" etc., Please state if that grant is for land south of the Cataloochee Turnpike?

A. It is.

Q. 39. Please file this grant as Exhibit No. 2 to your deposition?

A. I so file it.

Q. 40. State if you ever saw any report showing the calls of the state line south of the Cataloochee Turnpike by courses and distances?

A. No sir.

Q. 41. Did you ever hear of any such report?

A. No I never have.

Q. 42. Do you know where Cataloochee Turnpike is?

A. Yes sir.

Q. 43. In what county of Tennessee is it?

A. In the line of Tennessee and the Cocke County line also.

2181 Q. 44. On the Tennessee boundary line and the County line between Cocke County Tennessee and what County in North Carolina?

A. Haywood.

Q. 45. Have you ever been at that point?

A. Yes sir.

Q. 46. Is there a stone there?

A. Yes it has been 10 or 15 years since I was at that stone.

Q. 47. What does it show?

A. My recollection is it shows "Tenn. 1821 Aug. 31" on one side and "N. C. 1821 Aug. 31" on the other. But I am not positive about the "Aug. 31."

Q. 48. Now if you ran that line south from Cataloochee Turnpike—did you run it?

A. No, not exactly. I have run it from the 11th mile tree back to and a little beyond the ford. About three quarters of a mile I have never run going southwest.

Q. 49. Then there is a point between the Cataloochee Turnpike a little over three miles you have not run?

A. Yes sir.

Q. 50. How much of the state line south of the 4th mile tree have you run?

A. All of it to the 50th mile.

Q. 51. When were you there?

A. The first time in 1890 I ran part of it and then another part in 1896, well the balance of it, all in 1896.

Q. 52. Have you been there since 1896?

A. No sir.

Q. 53. Do you remember when you were there whether the 4th mile tree was standing?

A. No I do not.

Q. 54. Do you remember whether the 5th mile tree was standing?

A. I didn't see it.

Q. 55. What about the 6th mile tree?

A. It had fallen down the first time I was there and was still lying there on the ground.

2182 Q. 56. Any marks on it?

A. Yes sir.

Q. 57. What marks, describe them as nearly as you can?

A. The 6th mile tree was lying down and marks kinder under it. It had fallen over and under it was the marks and you could see the "6" and the "M" on it and probably other figures or letters. I could not be positive just what was on the tree.

Q. 58. What kind of tree was it?

A. Balsam.

Q. 59. What do you mean—pine?

A. Yes, they call them balsam and in the north fir.

Q. 60. Is it the same as hemlock?

A. No, more like white pine.

Q. 61. How were those marks put on the tree?

A. The 7th tree was standing; that tree was down.

Q. 62. The 6th was down?

A. Yes lying down.

Q. 63. Did you find the 7th?

A. Yes.

Q. 64. What marks were on it?

A. It had a mark eight or ten inches long and probably six inches wide.

Q. 65. Eight or ten inches up the tree and six inches wide?

A. Yes sir.

Q. 66. Where the bark had been removed?

A. Yes sir.

Q. 67. How were the marks on the tree?

A. The figure "7" about two inches long and just under it and "M" about the same height and under that "S. P." about the same sized letters and under that "1821."

Q. 68. How were those letters? Were they sunk into the wood of the tree?

A. Either cut in with a knife or burned in the tree. They were even, nice letters and figures.

Q. 69. How high were the letters?

2183 A. My recollection is about two inches.

Q. 70. What kind of a tree was that?

A. Balsam, same kind of tree.

Q. 71. Did you find the 8th mile tree?

A. Yes sir.

Q. 72. Was it standing when you were there?

A. Yes, marked the same as the others.

Q. 73. The bark had been removed and letters sunk in the wood?

A. Yes, same as on the 7th tree about the same size space on it and letters sunk into the wood just as on the 7th.

Q. 74. The identical same mark except on the 8th tree there was an 8 appeared instead of a 7?

A. Yes sir.

Q. 75. The letters of the same height and size?

A. Yes sir.

Q. 76. Well now what other mile tree did you find?

A. The 9th, it was the same, exactly the same way only the figure 9. And all the mile trees I saw were the same on the state line until I got to the 50th. It was marked entirely different. Just on the bark of the tree. And longer letters, some six or eight inches long, the 5 and the naught and the M.

Q. 77. Did the 50th tree have 1821 on it?

A. No.

Q. 78. Nor S. P.?

A. No.

Q. 79. Who showed you the 50th mile tree?

A. I think one of the chain bearers called attention to it. We ran in the gap 14 poles west of it and coming up the mountain I think one of the chain men, Ben Tipton, said he carried the chain for Wilson when he surveyed there.

Q. 80. Did Tipton refer to James K. Wilson who lived in Blount County and was a surveyor?

A. Yes sir.

2184 Q. 81. What was Wilson's reputation as a surveyor if you know?

A. It was good so far as I know.

Q. 82. Do you know from knowledge or reputation that he surveyed out all the state line on the side of Blount County and most of the lands in the eastern part of Blount County?

A. Yes I think he did, I understand he did, I know he surveyed a large boundary where the state line was.

Q. 83. Do you know whether or not he made definite location in a court proceeding of Meig's Post or where Meigs crossed the Smokey Mountain?

A. I understand so.

Q. 84. Now this report of the Commissioners of 1821 calls for the dividing line between the states to begin at a stone set up on the north side of Cataloochee Turnpike road and marked on the west side "Ten. 1821" and on the east side "N. C. 1821" running southwest to Bald rock on the summit of the Great Iron or Smokey Mountain and continuing southwardly on the extreme height thereof to where it strikes the Tennessee river etc., crossing Porter's Gap at a distance of 22 miles from the beginning, passing Meig's boundary line at 31½ miles: the Equonettly path at 53 miles: and crossing Tennessee river at the distance of 65 miles from the beginning." Do you know where the Equonettly path is?

A. No, I was never at that.

Q. 85. Did you survey the 50th mile tree? Did you reach that?

Q. No sir.

Q. 86. Do you know where Porter's Gap is?

A. Yes sir.

Q. 87. Do you know where Meigs' boundary line crosses the mountain at 31½ miles?

A. Yes, I know where the measurement takes it to and there is a pile of stones piled up on the mountain supposed to be Meigs' boundary line.

Q. 88. Now in running that state line how did you find the call for distances conformed to the mile marks?

A. Well at the beginning they came out pretty closely. The first tree I knew, or could get located, was the 6th. And the 7th was a little bit short.

2185 Q. 89. How much?

A. It was 301.4 poles. It should have been 320.

Q. 90. In running that did you endeavor to follow the summit of the mountain?

A. Yes I did follow it.

Q. 91. What distance did you actually run between the 7th and 8th mile tree?

A. 318½ poles.

Q. 92. That ran a pole and a half short?

A. Yes sir.

Q. 93. The call is "crossing Porter's Gap at 22 miles from the beginning." Now you know where Porter's Gap is?

A. Yes sir.

Q. 94. Did you run that line and measure it from the 6th mile tree?

A. Yes sir.

Q. 95. That ought to be—6 from 22 leaves 16 miles—16 miles would it not?

A. Yes sir.

Q. 96. How did that measure out?

A. It measured out 15.58.

Q. 97. 58 hundredths miles?

A. Yes sir.

Q. 98. It was 42 hundredths short?

A. Yes sir.

Q. 99. Now the next call for a natural object after Porter's Gap is the Meigs boundary line at 31½ miles. That would be 9½ miles southwest of Porter's Gap would it?

A. Yes sir.

Q. 100. Now did it measure on the ground 9½ miles or more or less?

A. It measured out 9 miles and 123 poles; it lacked 37 poles of being the 9½ miles.

Q. 100. That is, 37 poles of the distance called for?

A. Yes sir.

2186 Q. 102. Now from Meigs' boundary line 31½ miles from Cataloochee Turnpike to the 50th mile tree is 18 *miles* ½ miles is it?

A. Yes sir.

Q. 103. Did it measure out 18½ miles.
A. I think it measured more than 18½.
Q. 104. How much more?
A. It would be 3.1 miles.
Q. 105. More or less?
A. More.
Q. 106. How much more?
A. 3.1 miles.
Q. 107. So that while the distance as measured from the 6th mile tree to Porter's Gap is 31½ miles by you was pretty close to the call in the state line, the distance as actually measured from Meigs' broundary line to the 50th mile tree ran over the call in the report something like three miles?
A. Yes a gain of about three miles, most all appears to be west of Meigs' broundary line.
Q. 108. Between Meigs' boundary line and the 50th mile tree?
A. Yes.
Q. 109. That point where Meigs' boundary line crosses the state line is well established at this day is it not Mr. McNabb?
A. Yes sir.
Q. 110. State whether or not your running of that line would place it on the summit of the mountain and whether your running of it on the top of the main ridge was careful or otherwise?
A. Yes it was carefully done.
Q. 111. State in your own way what kind of a country it is that a surveyor or party of surveyors would have to travel over from that Cataloochee Turnpike to the Bald Rock on the summit of the Great Iron or Smokey Mountain and continuing to where you stopped your running at the 50th mile tree?

2187 A. Cataloochee Turnpike crosses through a very low gap and as well as I remember the rock stands about a half mile from Big Creek on the North Carolina side, and it is probably two miles or may be not over a mile and a half, from the mouth of the creek. Then the mountain gradually rises from there to what is known as White Rock or Bald Rock about four miles.

Q. 112. Is it rough or heavily wooded or tangled?
A. The first four miles up is tolerably smooth ridge until you get near to the top where it is black pines and more undergrowth, then after you get on top of that Bald Rock it is laurel and ivy and briers to the 6th mile tree.
Q. 113. Is that easy or difficult to run through?
A. Difficult.
Q. 114. Then south from the 6th mile tree how is it?
A. It is ragged and rough, especially on the high points, on the high balds where the timber has fallen and the trees blown down and they don't seem to rot and the limbs lay for years and don't fall off, it is very difficult working through or cutting a road through it. And it is that way until you get past Meigs' post, I don't remember just how far after that but two or three miles, then you strike open ground, it is down hill, cleared ground. The first one you come to is Siler's Bald.

Q. 115. What do you mean?

A. Where there is no timber, looks like it had been cleared, old clearings.

Q. 116. A smooth top?

A. Yes sir.

Q. 117. Then south from Siler's bald how is it?

A. Some rocky steep places but tolerably open ground from there to the 50th mile post.

Q. 118. How about that summit of the mountain, is it straight or tortuous?

A. Very crooked.

Q. 119. State whether or not it was always easy to follow the summit of the main ridge and know just what that summit or main ridge is?

A. No sir it was very hard in places to follow, it was almost impossible for a stranger to go in and keep on the main lead of the mountain without leading off and making mistakes. There
2188 were numerous places where there were short spurs leading off that were much higher than the main mountain.

Q. 120. For a short distance?

A. Yes and then they break off into the creeks or rivers.

Q. 121. You referred to a creek on the North Carolina side near to the top on the Cataloochee Turnpike as Big Creek,—is that creek on the map of 1821 shown as running into Big Pigeon River east of the line?

A. Yes sir.

Q. 122. Now I see marked on that map of 1821 to the west of the line and running into Big Pigeon River a creek called "Cozby Creek". Do you know that stream?

A. Yes sir.

Q. 123. About how far is it west of the line or that stone on the Cataloochee Turnpike approximately?

A. About 15 miles.

Q. 124. You mean it runs into the river?

A. About 15 miles below.

Q. 125. Below where it crosses the state line?

A. Yes, below where the state line reaches Big Pigeon.

Q. 126. Fifteen miles below the rock on the pike?

A. Yes sir.

Q. 127. You are familiar with that creek?

A. Yes sir.

Q. 128. How long a creek is it?

A. I expect the longest stream of it about 20 miles.

Q. 129. State whether or not in going from the Cataloochee Turnpike along the summit of the Great Iron or Smokey Mountain to the 50th mile tree, the ridge, that main ridge of the mountain, is the divide between the waters that run down into Tennessee and those which run eastwardly into North Carolina?

A. Yes it is.

Q. 130. Have you ever been down on this land in dispute?

A. Yes I have been down to the part north of the Tennessee river.

Q. 131. I will go back to that marked tree,—those marks
2189 on the 7th and 8th mile trees you have described. Did the bark grow over those letters or is the place still open there free of bark?

A. The face is still open.

Q. 132. Is it dead wood?

A. Yes the wood is dead and dry as a plant would be.

Q. 133. Is it colored by the elements?

A. It is dead, light color.

Q. 134. You said you had been on this territory near the disputed point on the north side of the river?

A. Yes sir.

Q. 135. Were you ever on the south side of the river at all?

A. No I did not go over on the south side.

Q. 136. From any point on the north side of the river,—how close were you on the north side of the Tennessee river to the Cheoee river?

A. From the looks of the map and what I was told probably a mile and a half.

Q. 137. Could you see it?

A. Not the water, only the channel or basin.

Q. 138. Could you see the channel?

A. Yes sir.

Q. 139. At its mouth?

A. Not right at the mouth.

Q. 140. Did you see enough to compare it with Big Creek and Cozby Creek?

A. No I didn't see the water.

Q. 141. How large is Big Creek?

A. About like Abram's Creek.

Q. 142. You do know Abram's Creek?

A. Yes I crossed it going to that place on the Tennessee river.

Q. 143. About what size is Cozby Creek on the upper end of that map compared with Abram's?

A. It is about two thirds as large.

Q. 144. As Abram's?

A. Yes sir.

2190 Q. 145. When did you go on this territory?

A. Sometime the first of September, last September.

Q. 146. Did you go there with Hale and Williams?

A. Yes sir.

Q. 147. State whether or not you went there for the purpose of blocking that tree known as Burns' tree No. 30?

A. Yes we were instructed to go and examine that tree.

Q. 148. Tell what you did?

A. We went down to the state line on the north side of the river on the road that crosses.

Q. 149. Into Swain County North Carolina?

A. Yes and went on the mountain to Parson's Bald and took a view of the country and came down the state line to the pine.

Q. 150. To the hemlock marked as *four* and aft?

A. No to the lone pine where you could see towards Fodder Stack and Hang Over.

Q. 151. Coming from Parson's Bald to the Tennessee river what objects on the south side of the river most impressed you?

A. I could see different places, we could get a view across the river on the south side but couldn't see it all the way but on these points we could get a view of it. I took it about the way we were traveling the different times we could see, that we were going pretty much in the direction of the center between Fodder Stack and Hang Over. The whole panorama, kinder laid out before us.

Q. 152. You say the whole panorama was before you,—what was the biggest object you saw?

A. I took it to be the main ridge.

Q. 153. What is that?

A. From Hang Over going on south or southwest, that is the highest part of it, from Hang Over going southwest.

Q. 154. You say the highest; how did it impress you with regard to size?

A. It seemed to be the largest the others seemed to be spurs running off from it. One went down towards Cheoee came in
2191 above the mouth of it and one come right down to the mouth, then one came right off down the mouth of Slick Rock and it had other little spurs running off of it, then over beyond that you could see the basin of Slick Rock Creek and then a mountain that had Fodder Stack beyond that.

Q. 155. How did Fodder Stack impress you compared with Hang Over from your view point?

A. As to height?

Q. 156. No,—size?

A. It did not appear to be as high and of course the height would determine the size,—the slope is the same.

Q. 157. Then a high mountain over there would indicate it was bigger?

A. Yes unless it is a rock bluff and will stand straight up; but ordinarily mountains have practically the same slope.

Q. 158. Did you go down to the hemlock marked fore and aft tree on the north side of the river?

A. Yes we came back from the pine and came up the river to the hemlock.

Q. 159. Up by the mouth of Slick Rock?

A. Yes sir.

Q. 160. You went to the tree No. 30 that Hale and Williams have testified about?

A. Yes sir.

Q. 161. What did you three men do there?

A. Mr. Williams and Mr. Hale cut a block out of it on the south or east side.

Q. 162. On the upper side?

A. Yes at the river.

Q. 163. What does the block show?

A. We all counted it to the sign of the mark in it.

Q. 164. What was it?

A. Looked like an ax mark.
Q. 165. A hack or blaze?
A. No we didn't see a hack, it was a blaze.
Q. 166. How old?
2192 A. 58 rings in it, 58 years old.
Q. 167. Did you cut further into the tree?
A. Yes, I didn't count the rings, Williams and Hale did to get back to 1821.
Q. 168. Were there any marks that far back?
A. No we didn't see any signs. They split that block out.
Q. 169. You have been present when Hale and Williams testified?
A. Yes.
Q. 170. What did you do with the block?
A. Split it into three pieces and each took a piece.
Q. 171. Did you take a piece?
A. Yes sir.
Q. 172. Have you got it?
A. Yes sir.
Q. 173. Why did you each take a piece?
A. It was cranky I suppose.
Q. 174. Is this your piece? (Producing block).
A. Yes sir.
Q. 175. It has gotten pretty dry?
A. Yes, dried considerably; I am not sure but I think the piece I got came from between the piece that Mr. Williams got, and the piece that Mr. Hale got.
Q. 176. Is this it (showing witness block)?
A. Yes sir.
Q. 177. Will you at your leisure smooth a place on it and mark it exhibit No. 3 to your deposition?
A. Yes sir. This block was cut out longer than this on this upper end; we trimmed it to make it convenient to carry, but left the mark on it.
Q. 178. The blaze mark?
A. Yes sir.
Q. 179. Now I call your attention to the block produced as exhibit to D. B. Burns' deposition and said by him to have been taken from the south end of that tree on which he claims there are two
2193 hacks at the uper end and a blaze at the lower end of 89 years old, shown by annular rings in the block. Have you examined that block?
A. Yes sir.
Q. 180. What does it show with reference to hacks and a blaze?

Mr. MATTHEWS: We object to this testimony as he has not qualified as an expert; he says he has had very little if any experience in counting ages.

A. I can see four plain hacks in there,—inner marks.
Q. 181. Four hacks?
A. Four very plain hacks but I don't see anything to indicate a blaze only a dead spot at one of the hacks.
Q. 182. Would that indicate a blaze?

A. I think not?

Q. 183. Why?.

A. If the hacks were not there it might but there is a place where the bark was knocked loose.

Q. 184. Is there a hack below that?

A. Yes sir.

Q. 185. Still another?

A. Yes sir.

Q. 186. State whether or not between those two lower hacks the wood has been grown together again?

A. Yes it does not look like it had ever been broken apart.

Q. 187. You say it looks like it had never been broken apart?

A. Yes, I don't think so,—between the hacks.

Q. 188. About how many trees have you blocked in your experience as a surveyor, if you can give any kind of idea, 100?

A. No I don't expect so, not over 20 I expect.

Q. 189. Well now suppose there are four hacks on the south side of that tree is that a state line mark?

A. No not according to the report that *hear* the Commissioners made.

Q. 190. In your experience and observation as a surveyor in Greene, Cocke, Sevier and Blount Counties did you ever find
2194 any marks of four hacks to indicate a line mark?

A. Greene County uses four hacks for a corner all the time and so does Carter County; and three for a side line; and a part of Cocke County, all of it next to Chucky river or Chucky knobs you will find the old line- have three hacks for a side line and four for a corner.

Q. 191. Has four hacks ever been used as a fore and aft tree mark?

A. No except on the County line between Cocke County and Jefferson County I helped to locate that line about 15 years ago and we found that the commissioners originally used four hacks on each side, and a rod wide.

Q. 192. How was that?

A. They had hacked the trees with four hacks on each side, a rod wide.

Q. 193. A rod apart?

A. The trees had four hacks and the trees were a rod apart,—the line was a rod wide.

Q. 194. Is the present town of Newport where old Newport was?

A. No sir.

Q. 195. In 1821?

A. No sir.

Q. 196. When was the present town of Newport established on its present site?

A. About 1875 I think.

Q. 197. Where was the old town of Newport?

A. Two miles north of where it is now across on the French Broad River.

Q. 198. On the opposite side of Pigeon river from the present town?

A. Yes sir.

Q. 199. How far is the town of Newport from the Cataloochee Turnpike?

A. 22 miles from the present town to where the Cataloochee Road crosses the state line,—that would make it 24 miles.

Q. 200. Suppose the Commissioners met at the present town of Newport on July 16 1821 and started on that day for the Cataloochee Turnpike at the place of beginning how long would it take them to get there say a party of six Commissioners, two surveyors and chainmen and ax men and provision carriers necessary to sustain a party like that?

2195 A. It would depend on how they went if they went on foot probably they would not get there in one day, if they went in a conveyance, by driving they might do it in a day.

Q. 201. Do you think it possible to get there to begin work on the 16th?

A. No sir.

Q. 202. From your experience and observations of the first 50 miles of that line taking into consideration the character of the ground that would have had to be traversed,—how long do you think would have been required for a party of surveyors and commissioners to go over that line doing reasonably accurate and careful work?

A. That would be very hard to say. When I was surveying on the mountain there I made an average of about a mile and a half a day is my recollection and all of that upper end was that way; on the lower end I got six miles in two days.

Q. 203. Those were your biggest day's work?

A. Yes sir.

Q. 204. State whether or not in making that survey you all the time or part of the time had some one with you who had been over the line?

A. I had some one with me all the time that claimed to know the line.

Q. 205. Would that facilitate your progress?

A. Yes it ought to, to have a man ahead that knew it or could hunt it up by the time we could get to it. He would find which way to turn and save time.

Q. 206. If the remainder of the line was southwesterly from the 50th mile tree to the Georgia line called for as being 66 miles, was it the same character in respect of its topography as the first 50 miles, how long do you think would be required for a party composed of six commissioners, two surveyors and such a party as would be required on a line survey of that kind, to traverse that distance from Cataloochee Turnpike to the Georgia line, say it is 116 miles?

A. I should think 40 to 50 days.

Q. 207. Working days?

A. Yes sir.

2196 Q. 208. That would be exclusive of days for rainy weather or weather you could not work?

A. Yes, that is my belief from experience on the mountains. I

don't think an engineer could do it correctly in less time than that, today.

Q. 209. Even today?

A. No sir.

Q. 210. You mean today with somebody having preceded all the way and marked it out at one time?

A. Yes. I am satisfied that the work is done more carefully now than it used to be; most everything else is; the difference in the kind of work they do would make up for what blazes they find.

Q. 211. For what?

A. For what blazes they find to show the way on the trees. From the 6th tree to the 31st,—or any where it is not open to show the way,—you could not tell which way to turn unless you had a mark showing the line.

Q. 212. Do you think such a party as described in this party of 1821 could have gone over that line and made anything like a careful survey of it in less than fifty days?

A. No I do not.

Cross examination waived.

And further saith not.

C. B. McNABB.
By S. E. CLEAGE,
Clk. of Sup. Ct. of Tenn.

Sworn to before me Jan. 7. 1911.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

Agreement.

By agreement the further taking of testimony on behalf of the defendant State of Tennessee is adjourned as follows:

(1) Until Monday Jan. 16. 1911 when the further taking
2197 of testimony will be resumed before me in the Supreme Court Room at Knoxville, Tennessee.

(2) Then it was agreed that the defendant State of Tennessee might take the depositions of such witnesses as they might desire to examine in the City of Washington, D. C. on Thursday, January 19, 1911 before some party authorized to take depositions in the District of Columbia; said depositions to be taken at the Hotel Raleigh in said City of Washington or such other place in the City of Washington, D. C. as counsel for Tennessee might designate.

This January 11, 1911.

Certified to:

S. E. CLEAGE,
Clerk of the Supreme Court of Tennessee.

2198 Ex. #1 to Deposition C. B. McNabb.

No. 32539.

The State of Tennessee to all *the* whom these presents shall come, Greeting:

Know Ye, That in consideration of an entry made in the Entry Taker's Office of Green County of No. 1279 dated the 14th day of June 1830 By Jacob Peck There is granted by the State of Tennessee unto the said Jacob Peck and his heirs a certain tract of land, containing Five Thousand acres lying in the County aforesaid, on the State line of Tenn. and North Carolina. Beginning where the lines of Green and Washington Counties intersect the State line at a marked red oak; corner to said counties, then with the state line 30 courses, South 55 West 28 poles to a Chestnut, then south 66 West 40 poles to a Spanish oak South 71 west 36 poles to a stake, west 36 poles to a Chestnut north 85 West 26 poles to a Spanish oak, north 71 West 46 poles to a stake, south 46 West 14 poles to a Chestnut, south 45 West 30 poles to a stake, south 62 West 68 poles to a Spanish oak on the top of a knob, south 45 West 32 poles to a sugar tree, south 18 West 42 poles to a stake, north 18 West 22 poles to a stake, south 35 West 34 poles to a sugar tree; south 50 West 14 poles to a Chestnut, south 12 West 32 poles to a Spanish oak, South 82 West 10 poles to a buckeye, south 45 West 14 poles to a stake; south 77 West 52 poles to a cucumber, south 84 West 20 poles to a Chestnut, South 57 West 44 poles to a Chestnut, south 40 West, 46 poles to a maple, south 82 West 28 poles to a beech south 44 West 28 poles to a clift of rocks, south 21½ West, 205 poles to a laurel thicket almost inaccessible south 80 West 14 poles to a mountain, south 58 West 38 poles through a laurel thicket to a stake at the 730th station of the State line, south 41 West 20 poles to a stake through laurel, south 80 West 10 poles to a stake, south 58 West 20 poles to a stake, at the 734th station, south 62 west four hundred poles to a stake in said line, then leaving the state
2199 line north seven hundred poles to a stake, then north fifty seven east, thirteen hundred and seventy eight poles to a stake, on the line of Green & Washington Counties, then with said line south three east, seven hundred poles to the beginning.

Surveyed the 2nd day of November, 1838 with its appurtenances, to have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jacob Peck and his heirs and assigns forever.

In Witness Whereof, Newton Cannon, Governor of said State of Tennessee has hereunto set his hand, and caused the great Seal of the State to be affixed at Nashville, on the 4th day of April in the year of our Lord one thousand eight hundred and thirty nine, and of American Independence the sixty third.

By the Governor.

[SEAL.] N. CANNON.

LUKE LEA, *Secretary.*

STATE OF TENNESSEE:

I, J. G. Stuart, Register of the Land Office of East Tennessee, do hereby certify that the within is a true and correct copy of Grant No. 32539 from the State of Tennessee to Jacob Peck as the same appears of record in Vol. 22 at page 396 Records Land Office for East Tennessee, at Knoxville.

Witness my hand this 4th day of January 1911.

J. G. STUART.

Register Land Office for East Tennessee.

Endorsed: No. 32539. Grant from The State of Tennessee to Jacob Peck.

2200 EX. #2 TO DEP. C. B. MCNABB.

No. 21636.

The State of Tennessee to all to Whom these Presents shall Come, Greeting:

Know Ye, That in consideration of an entry made in the Entry Taker's Office of Sevier County of No. 794 dated the 10th day of June 1830 By Jacob Peck and Adam Peck There is granted by the State of Tennessee unto the said Jacob Peck & Adam C. Peck and their heirs a certain tract of land, containing five thousand acres lying in the County aforesaid.

Beginning on the 11th mile tree marked by the commissioners running the state line it being the corner of Sevier & Cocke Counties on the divide of the waters of Little Pigeon from those of Crosby's Creek, then with the State line and the top of the Smokey Mountain at the same winds, three and a half miles, thence north forty five West one thousand and sixty poles to a stake horizontal measure, then north forty five east nine hundred poles to said County line of Sevier with the same to the beginning.

Surveyed the 5th day of May 1830 with its appurtenances, to have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said J. Peck & A. C. Peck and his heirs and assigns forever.

In Witness Whereof, Newton Cannon, Governor of said State of Tennessee has hereunto set his hand, and caused the great Seal of the State to be affixed at Nashville, on the 28th day of May in the year of our Lord one thousand nine hundred and thirty eight and of American Independence the sixty second.

[SEAL.]

By the Governor:

N. CANNON.

LUKE LEA, *Secretary.*

STATE OF TENNESSEE:

2201 I, J. G. Stuart, Register of the Land Office of East Tennessee, do hereby certify that the within is a true and correct copy of Grant No. 21636 from the State of Tennessee to Jacob

Peck & *Abram* C. Peck as the same appears of record in Vol. 21 at page 735 Records Land Office for East Tennessee, at Knoxville.

Witness my hand this 4 day of January, 19—.

J. G. STUART,
Register Land Office for East Tennessee.

Endorsed: No. 21636. Grant from the State of Tennessee to Jacob Peck and *Abram* C. Peck.

(Exhibit No. 3 to deposition of McNabb is a block of wood.)

2202 NORTH CAROLINA
vs.
TENNESSEE.

Deposition of M. E. Cozad, Taken at Knoxville, Tenn., Jan. 16, 1911, on Behalf of the State of Tennessee.

2203 In the Supreme Court of the United States.

STATE OF NORTH CAROLINA
vs.
THE STATE OF TENNESSEE.

Deposition of M. E. Cozad.

KNOXVILLE, TENN., *Jan.* 16, 1911.

Further taking of testimony on behalf of Defendant State of Tennessee was resumed at chambers in the Supreme Court Room at Knoxville, Tenn., pursuant to agreement and the order of adjournment.

Present on behalf of North Carolina: Mr. Soudley and Mr. Posey.
On behalf of Tennessee: Gen. Chas. T. Cates, Jr., and Maj. McCroskey.

M. E. COZAD, witness on behalf of defendant State of Tennessee, being first duly sworn deposed as follows:

Examined by Gen. CATES:

Q. 1. Where do you live?
A. I am living at present in Franklin, North Carolina.
Q. 2. How long have you lived there?
A. Just a few months.
Q. 3. What relation are you to Mr. Wm. R. Hopkins?
A. I am his father in law.
—. 4. William R. Hopkins is one of the claimants of land in controversy in the Slick Rock territory under grants from North Carolina, is he not?
A. Yes sir.

Q. 5. State whether or not you have been representing him
2204 in relation to those matters since the controversy grew up in regard to those lands?

A. To some extent.

Q. 6. State whether or not you acted as his agent in the litigation in reference to those lands in the Circuit Court of the United States at Knoxville?

A. I would not say that I was. The relationship is hardly that which you would characterize as an agent. I have done a great deal of work for them and am interested in that I am a purchaser of these lands from them under an option.

Q. 7. Then you have a personal interest in the result of the controversy?

A. I have.

Q. 8. Are you the same Mr. Cozad who made arrangements with D. B. Burns to make a survey of that property during the pendency of the controversy in the Circuit Court of the United States at Knoxville?

A. Yes sir.

Q. 9. When did you take an option on these lands, Mr. Cozad?

A. On the 6th or 8th day of July 1908,—I forgot whether it was the 6th or the 8th.

Q. 10. Was that some seven years after the final determination or decree in the cause of Hebard vs. Belding et al. in the Circuit Court of the United States, or Court of Appeals at Cincinnati was it not?

A. I would say so. I don't remember the exact date but about that time.

Q. 11. You have been in Asheville a good deal during the pendency of the controversy over these lands have you not?

A. The last six months I have been in Asheville almost continually.

Q. 12. You have been acquainted with all the counsel engaged in the present controversy have you not?

A. Yes sir.

Q. 13. And you were acquainted with the counsel engaged in the controversy in the Circuit Court of the U. S. at Knoxville and in the Court of Appeals at Cincinnati?

A. Yes sir.

Q. 14. You made arrangements for counsel did you not?

2205 A. Just what you mean by that,—no I did not make arrangements with counsel. That was a matter that Mr. Hopkins had to do with, although when Mr. McQueen was called in I think I wrote him and employed him at the instance of the Cleveland people.

Q. 15. Was he one of the counsel representing the Hopkins side of the controversy in the U. S. Court at Knoxville?

A. Yes sir.

Q. 16. Do you know who introduced the bill in the Legislature of North Carolina under which it is claimed this suit was brought in the Supreme Court of the United States?

A. I do not.

Q. 17. Don't you know it was the representative from Asheville?

A. I do not know that; I presume that is true, but I don't know of my own knowledge.

Q. 18. Who prepared that bill?

A. I don't know.

Q. 19. Let me refresh your recollection. Don't you know it was prepared by counsel employed by Mr. Hopkins?

A. No I don't know that.

Q. 20. What arrangement have you and Mr. Hopkins in reference to the payment of counsel fees and expenses of this suit?

A. My arrangement with the Cleveland people was that under the option I was to bear from that date, the 8th or 6th of July 1908, I was to pay all the expenses attending the litigation in these matters. They gave me a contract that gave me a margin between the selling price and my purchase price and in consideration of that I was to pay all the expenses of litigation.

Q. 21. Then you employed counsel?

A. They were already employed and I was simply to bear their expenses from that time on. Mr. Hopkins dictated that Gen. Theo. Davidson should be retained as counsel by me and the same counsel already representing the Cleveland people were retained. Later on Mr. Sondly was called in also.

2206 Q. 22. By whom?

A. At the suggestion of the other counsel in the case. Gen. Davidson was in rather poor health and I made arrangement with Sondley after advising with the Cleveland people.

Q. 23. You mean by the Cleveland people the Hopkins interest?

A. Yes, we speak of them that way instead of using their names. We mean W. R. Hopkins and others.

Q. 24. Prior to your taking the option Gen. Davidson was the personal counsel for Hopkins in the controversy?

A. Yes sir.

Q. 25. He stipulated that Gen. Davidson should be retained for future litigation?

A. Yes sir.

Q. 26. You thereupon retained him for services in this case?

A. Yes sir. My own personal counsel are not in this case. He is Mr. Weaver of Asheville who is my attorney in all matters I am individually interested in.

Q. 27. You are paying the entire expense of this litigation?

A. I do.

Q. 28. You say you don't know that Gen. Davidson drew the bill at Mr. Hopkins' instance that was presented to the North Carolina Legislature?

A. I do not, I presume it was drawn at his instance—but I don't know that even.

Q. 29. With what North Carolina authority did you enter into an arrangement under which you were to bear all the expenses of this lawsuit?

A. Well I don't know how to answer. It was by contract with the Cleveland people under this option that I should bear all ex-

penses but the burden of the thing has been on Mr. Hopkins, the dictation, control and management has been with him.

Q. 30. Didn't you enter into an agreement with an official of North Carolina to bear all the expenses of this particular litigation?

A. No I did not. I never met any such party until within three months. I never had any correspondence or conversation like that.

2207 Q. 31. Do you know whether Mr. Hopkins entered into any such stipulation?

A. I do not.

Q. 32. Do you know Capt. Edmond Jones of North Carolina?

A. I do.

Q. 33. Didn't you tell Capt. Jones you had agreed with the State of North Carolina, or that the Cleveland people had agreed with the State of North Carolina, to pay all the cost incident to having this suit prosecuted?

A. I never told anybody that.

Q. 34. Isn't that the fact?

A. I don't know. Indeed it has been intimated to *be* we would not be obliged to pay, as the State would pay it.

Q. 35. Do you know whether bond was executed to some official of North Carolina indemnifying North Carolina against cost of this suit?

A. I think there was.

Q. 36. What was the amount of that bond?

A. I don't remember.

Q. 37. Who gave the bond?

A. I think Mr. Hopkins and myself is my recollection.

Q. 38. Who is that bond filed with?

A. I cannot tell you.

Q. 39. When was that bond executed?

A. I cannot tell you.

Q. 40. Before this suit was instituted was it not?

A. I should say about the time.

Q. 41. Isn't it a fact the State of North Carolina refused to institute this suit until you did execute that bond?

A. I don't know that that is a fact. I had no conversation with anybody about it. I made no arrangement. I knew nothing only from hearsay.

Q. 42. You did sign the bond?

A. I think so.

Q. 43. Who else signed it besides you and William R. Hopkins?

A. I cannot remember.

Q. 44. Where was the bond prepared?

2208 A. I cannot tell. I signed it in the City of Asheville is my recollection. All of those arrangements from the inception of that to the present time have been in other hands than my own. I had nothing to do except I did sign a bond is my recollection.

Q. 45. What other hands do you refer to?

A. The Cleveland people and their attorneys.

Q. 46. Well do you mean W. R. Hopkins as representing the Cleveland people?

A. Largely, yes.

Q. 46. Who do you mean by their attorneys?

A. Mr. Matthews of Cincinnati and Gen. Davidson, until Mr. Sondley was brought into the case, were the chief counsel; they had other local counsel, various people, but they had the whole matter in charge.

Q. 48. What arrangement have you with the North Carolina claimants around in the Tellico country?

A. I have no arrangement with them whatever; I have no arrangement with them whatever.

Q. 49. Who represents them?

A. I think Mr. Posey.

Q. 50. Who else?

A. Mr. Merrick.

Q. 51. What is the name of the concern (ther firm or corporation claiming that land around the head waters of Tellico under North Carolina grants?

A. I speak of them as the Thompson interest. I never met Thompson in my life but always speak of them as the Thompsons. Individually I have some land on the head waters of Tellico in this portion in controversy and am interested in that litigation in that way. I bought from the Trustees of the Beldings all the Belding lands outside of Graham County and it embraced 11,000 or 12,000 acres in Cherokee County and about 1,500 acres of it lies in this portion that is in dispute on the head waters of Tellico. In that far I am personally interested. The Cleveland people have nothing to do with that.

Q. 52. You and the Thompsons are interested in the lands around the head waters of Tellico?

2209 A. No I have never met Mr. Thompson and am bearing no part of the expense.

Q. 53. No part of the expense with respect to Tellico?

A. No sir.

Q. 54. Who is bearing that?

A. I cannot tell you.

Q. 55. Do you know who employed Mr. Merrick?

A. No sir.

Q. 56. He is counsel for Thompson?

A. Yes and Mr. Posey but not mine.

Q. 57. Do you know when the bill was originally filed by North Carolina in the Supreme Court of the United States it only covered the controversy at Slick Rock?

A. That is my recollection.

Q. 58. Why did you have it amended?

A. There was considerable discussion between Gen. Davidson and Mr. Matthews, and it was largely done at Gen. Davidson's urgency. He felt trouble would likely arise right along and he thought they might as well have the entire matter settled.

Q. 59. Do you know whether Gen. Davidson represented at that time the claimants in the Tellico Country?

A. I know he did not.

Q. 60. Do you know he had an understanding with claimants in Tellico district?

A. I think not. I heard a conversation between Mr. Matthews and Gen. Davidson when Gen. Davidson thought it was better to institute suit to settle all the controversy between the two states and make an end of it and not take just pieces of propetry. I know Mr. Merrick was sorry to be brought into the litigation that way but the bill was instroduced and they were forced to thresh over the controversy on the Tellico waters.

Q. 61. What bill?

A. By which the Legislature of North Carolina authorized the Attorney General to institute suit with the State of Tennessee.

Q. 62. Is that the bill introduced in the Legislature by the representative from Buncombe County?

2210 A. I cannot tell, I presume it is, I know nothing personally.

Q. 63. Do you know who was the representative from Buncombe County in the legislature at the time that bill passed?

A. I think Mr. Weaver was in the house at that time, I am not sure.

Q. 64. Is that Mr. Weaver your personal counsel?

A. Yes, I may be wrong, I did not pay any attention but I think he was in in the house at that time. I don't know who presented the bill or whether it was presented in the house or in the Senate.

Q. 65. Do you know Mr. John Franklin Shields?

A. Yes I have met him several times.

Q. 66. Do you remember a conversation with him in which you told him sometime previous to the filing of the original bill in this cause in the Supreme Court of the United States, that you were going to Asheville to have your counsel there arrange to bring this action?

A. I don't remember any such conversation.

Q. 67. That is what you did do?

A. I urged it a long while before it was done. I felt as though controversy between individuals would not settle it and it ought to be between the two states. I talked it several years before action was brought.

Q. 68. But you did get North Carolina to bring it but not until you indemnified her against all cost and attorneys' fees?

A. I did not get them to do it. When it was finally done it was by some one beside myself.

Q. 69. You mean Mr. Hopkins?

A. I presume so.

Q. 70. The fact is that Mr. Hopkins as vendor and you as purchaser under him, did enter into bond to the State of North Carolina to indemnify her against any cost of attorneys' fees in this litigation?

A. I think that is correct.

Q. 71. You are paying Mr. Burns and other surveyors and witnesses in the lawsuit on behalf of the State of North Carolina?
A. Yes.
Q. 72. And the attorneys' fees?
2211 A. Yes, all expenses connected with it.

Cross-examination.

By Mr. SONDLEY:

Q. 73. You say you were to pay all expenses. It did not include the expense or fee of the Attorney General of North Carolina did it?
A. No sir.
Q. 74. He has actively participated in this case?
A. Yes sir.
Q. 75. Isn't it a further fact the Attorney General of North Carolina came to Murphy for the purpose of starting the testimony on behalf of North Carolina?
A. Yes he took a prominent part in it.
Q. 76. When different views of the case and different policies were urged upon him by the Hopkins people and other people the Attorney General himself settled the policy of that suit?
A. He did sir. And this is true that he has been advised with all along in regard to every move by the attorneys employed.
Q. 77. Don't you know he has been regarded and treated by Mr. Hopkins and the attorneys as having control of the entire situation and being consulted in behalf of the State?
A. Yes sir.
Q. 78. Have you or the Hopkins people or anybody employed him at all?
A. I don't know about the Cleveland people I know I have never paid him or been asked to pay him. I never had five minutes' conversation with him.

Gen. CATES: The Attorney General of Tennessee in behalf of Tennessee desired to states it never entered into his mind to suggest that Gen. Bicket, Attorney General of North Carolina was in the employ of individuals personally interested in this lawsuit
2212 or to make such refelection either upon the Attorney General of North Carolina or any counsel in this lawsuit.

Q. 79. Don't you know the officials of North Carolina have also dictated the action and control of this suit in conjunction with Gen. Bicket and when they directed Gen. Davidson to take part when Gen. Bicket could not be present?
A. Yes sir.
Q. 80. And he has acted under that?
A. Yes sir.
Q. 81. Is it not the fact now that if there should be difference of opinion irreconcilable between the Attorney General of North Carolina on one hand and the attorneys for these people you speak of as the Hopkins people on one hand and the Tellico claimants on the other hand,—that the Attorney General of North Carolina would control the litigation?

A. Yes, they recognize that. I know it is true they make no move in this matter without consulting him.

Q. 82. He has on previous occasions had to determine these matters and has determined them?

A. Yes sir.

Q. 83. You were asked about Edmund Jones. When did you first meet him?

A. I think January 7th this year.

Q. 84. Where does he reside?

A. In Lenoir, the County Seat of Caldwell County, N. C.

Q. 85. What is his business?

A. Attorney.

Q. 86. How did you happen to meet Mr. Jones?

A. I knew he was a grand-son of Wm. Davenport, surveyor on the part of North Carolina who ran the line in 1821 and I had reason to believe they had found the field notes connected with that survey and I went to see him and he gave me a certified copy of the field notes of 1821 of Wm. Davenport in that survey. That was the first and only interview I had with him.

2213 Q. 87. What effort had you previously made to find such notes.

A. I had spent considerable time and money to ascertain if they were in existence and a good deal of search had been made. I learned from him they finally found them in Davenport's old secretary in a blind drawer they had overlooked to this time.

Q. 88. When did you first begin to search for these field notes.

A. I should say it was five or six years ago. My first search was at Raleigh where I spent about ten days personally hunting for the field notes or old maps or any maps connected or that might bear on the subject. A few months later I went again to Raleigh and employed a young man who had familiarity with the records in the State department. I spent several days with him working there and then left him to make an absolute and exhaustive search for them. I *have* had correspondence with the Secretary of the State of Tennessee in regard to the matter but not until this litigation arise did I make an effort to find the field notes from the heirs of Davenport.

Q. 89. Do you remember when you began that search?

A. Last spring employed Judge Every to find if possible any papers that might bear on the question of the State line that might be in the hands of the heirs of Wm. Davenport. About the middle of November was the first they found when they found this hidden drawer in the old secretary now owned by Wm. Davenport Jones at Patterson N. C. Then they wrote a letter to our people and also to the Attorney General of the State stating they had found the old field notes.

The defendant State of Tennessee objects to the testimony of the witness in regard to what Edmund Jones told him in respect of the alleged field notes of Wm. Davenport; and also to what Edmund Jones may or may not have communicated either to him directly by word of mouth or by letter or to the Attorney General of North

Carolina,—upon the ground that the same is hearsay and not competent evidence in this cause.

2214 Q. 90. What year was it these field notes were first found or you first heard they had been found?

A. I heard of it in December 1910.

Q. 91. And when had they been found?

A. In November 1910.

Defendant State of Tennessee also objects to the statement by the witness as to when the alleged field notes were found, it being obvious he has no personal information thereto, upon the ground that it is a communication from another person and therefore hearsay and incompetent in this cause.

Q. 92. What relation was Edmund Jones to Wm. Davenport Jones.

A. A younger brother.

Q. 93. Were you ever at the old Davenport home?

A. Yes sir.

Q. 94. Of Wm. Davenport?

A. Yes sir.

Q. 95. When were you there?

A. On Jan. 5 and 6 of this year.

Q. 96. Did you ever see the writing desk or secretary or sideboard in which these field notes of the survey of 1821 of Wm. Davenport had been found?

A. Yes sir.

Q. 97. Where and when?

A. In the house of Wm. Davenport Jones near the town of Patterson N. C.

The State of Tennessee objects because the questions assume that the original field notes were found at some particular time or in some particular recep*tical* and the witness has no personal knowledge of the matters in regard to which he is testifying and it must be he received his information from other parties and therefore it is hearsay and incompetent.

2215 Q. 98. Please describe this piece of furniture and the secret drawer to which you have referred?

A. I would characterize it as a secretary, rather a handsome piece of old furniture. I didn't examine the drawer. It was pointed to me.

Q. 99. Did you see the drawer itself or only the place?

A. The place. The drawer was not opened in my presence.

Q. 100. What time in the month of January 1911 did you first see or were told of the contents of those field notes?

A. In the evening of January 5.

Q. 101. Was that before or since the last session in which testimony in this cause was taken?

A. It was during that session.

Q. 1-2. How long before it closed?

1541

A. Two or three days.

Q. 103. Have you been present at any taking of testimony w
ever since you saw the piece of furniture you have mentioned
derived the information as to the contents of the notes you speak

A. No sir.

Q. 104. State whether or not you have from the time this
began made every effort in your power to find these field notes.

A. Yes very emphatically. I have spent a great deal of time
money and instituted a good deal of inquiry.

Q. 105. Do you know whether or not W. R. Hopkins and
ciates have made efforts to find these notes?

A. I cannot say. I think they relied largely on my efforts.

Q. 106. You have been in communication with them and
relied on you and they knew you were making the effort?

A. Yes, I was on the ground and they were away.

Re-examination.

Q. 107. You said you registered Judge Avery

A. Yes sir.

2216 Q. 108. He lives at Lenoir N. C.?

A. No Morganton.

Q. 109. Is he related to W. Davenport?

A. Not that I know, I never heard of it.

Q. 110. You said the Attorney General for North Carolina w
Murphy when you commenced to take deposition in this cause?

A. Yes sir.

Q. 111. How long were you there, a day?

A. It has gone from memory now, it seems to me two or t
days, perhaps longer.

Q. 112. I presume the record kept by Norvell the Commissio
in North Carolina will show?

A. I presume so. I remember we were there several days but
of the time in consultation. I know they were several days
crossing the police and congress of procedure.

Q. 113. You have been present all the time?

A. No sir.

Q. 114. You were at Murphy?

A. I was there.

Q. 115. Gen. Bickett left during the taking of testimony there

A. My recollection is so.

Q. 116. You were at Asheville?

A. I have been present on quite a number of takings, not d
them.

Q. 117. Was Gen. Bickett at Asheville when you took testimo

A. I think so, I am not sure.

Q. 118. He didn't stay during the session?

A. It is my recollection he was there but not through the sess

Re-cross-examination.

Q. 119. Don't you know there have been several conferences between you, Bickett and others connected with this case, both by correspondence and personally?
A. Yes sir.

2217 Re-examination.

Q. 120. Where is Mr. Hopkins?
A. I don't know whether he is in Philadelphia, Washington, New York or Cleveland. He is on the go continually and very busy. I think today probably he is in Cleveland.
Q. 121. He has attended all the other sessions of examining witnesses in this cause?
A. I think nearly all. I am not sure.
Q. 122. Do you know whether he expects to be in Washington on the 19th of this month when we take proof there?
A. I know he expects to be there.

And further saith not.

M. F. COZAD.

Sworn to before me this Jan. 16, 1911.

S. E. CLEAGE.

The witness' name is signed to the deposition by consent of parties by the Clerk of the Supreme Court of Tennessee.

2218 In the Supreme Court of the United States.

No. ——. Original.

THE STATE OF NORTH CAROLINA
against
THE STATE OF TENNESSEE.

STATE OF TENNESSEE,
County of Knox.

I, Samuel E. Cleage, Clerk of the Supreme Court of Tennessee, and as such acting as Commissioner to take depositions in the above entitled cause, do hereby certify that the witnesses whose testimony appear in this volume of testimony, to-wit: John L. Williams, H. M. Kent, C. B. McNabb and M. F. Cozad, personally appeared before me in the Supreme Court room at Knoxville on the days stated, and were by me duly sworn to testify the truth the whole truth and nothing but the truth, and that they did depose to the matters in their respective depositions as set forth and did as certified to, either subscribe their names in person to said depositions or their names were subscribed thereto by myself under the agreement of counsel for both parties, and did file the exhibits called for in each of said

depositions, and that the counsel for the complainant State of North Carolina and the defendant State of Tennessee did make the several agreements set forth in this volume of testimony and certified to be true, and I further certify that counsel for complainant and defendant appeared on behalf of said complainant and defendant as stated in this volume of testimony.

In witness whereof I have hereunto set my hand and seal on this the 26th day of December, 1911.

SAMUEL E. CLEAGE,
Clerk Supreme Court of Tennessee.

2219 The next witness, Mr. JOHN L. WILLIAMS, for the defendant State of Tennessee, having been duly sworn, deposed and said:

Direct examination by Gen. CHARLES T. CATES, JR., Attorney General, on behalf of the defendant, State of Tennessee.

Q. 1. Are you the same John L. Williams who has been once examined on behalf of the State of Tennessee in this case on about December —, 1910?

A. I am.

Q. 2. I will ask you to state, Mr. Williams whether in endeavoring to determine the location of the boundary line between the States of North Carolina and Tennessee you have ever represented any one except the State of Tennessee?

A. I have not.

Q. 3. Since you were examined in this case there has been placed in evidence on behalf of North Carolina a little book made an exhibit to the testimony of W. D. Jones, which it is claimed contains a copy of the field notes of W. D. Davenport in surveying the boundary line between the States of Tennessee and North Carolina from the Ocklawaha Turnpike Southwesterly to the Georgia line. Have you ever seen that book before to-day?

A. No, sir.

Q. 4. Have you ever seen it before it has been produced here before you on the table?

A. I never saw it before this morning. I saw it passed around here in the room.

Q. 5. Have you ever seen it before this morning?

A. No, sir.

Q. 6. Have you ever examined it?

A. No, sir.

Q. 7. Were you furnished a copy of the alleged field notes as set out in that book?

A. I was.

Q. 8. Have you that copy with you?

A. I have it here in my room a portion of it. The copy that was first furnished me I filed it as an exhibit in some testimony
2220 regarding the calls of the Davenport notes. I don't remember now just when it was, about May or June, as I remember

now, and I filed that first copy of the notes I had as an exhibit here in Knoxville.

D. 9. In what case?

A. It was in the State Line suit.

D. 10. You mean in this particular suit?

A. Yes, sir.

D. 11. You haven't been examined in this particular suit since you were examined in May?

A. I was examined regarding the calls of the field notes as compared with the maps sometime in the Spring, I don't remember just when.

D. 12. Was that in some proceeding growing out of the suit between Belding and Heland pending in the Civil Court of Appeals at Cincinnati?

A. I understood at the time it was on a question of whether the field notes would be admitted as evidence.

D. 13. That was not in this particular suit, was it?

A. I am sure I don't know. I was examined by Col. McCroskey and Mr. Mathis.

D. 14. Mr. C. B. Mathis of Cincinnati?

A. Yes, sir. I had a copy of these field notes from about the 54th mile tree to the Georgia State Line as given and compared that copy with the copy I was furnished before that first copy was filed as an exhibit and I have that copy made from and compared with the first copy.

D. 15. Have you it here?

A. I have.

D. 16. Let us see it, please.

A. All right. (Handing counsel the copy.)

D. 17. Now I will ask you to state whether you made a survey according to these alleged Davenport notes from the 59th mile tree Westerly and, if so, how far Westerly or Southwesterly?

A. Yes, I made a survey beginning at the 59th mile tree and surveyed by the calls given in that copy to the 72nd mile as called for in the notes.

D. 18. At the end of the 72nd mile running according to these Davenport notes, so-called, where did you find yourself?

A. West of Citico Creek.

D. 19. How far West of Fodder Stack?

A. About a mile and three quarters.

D. 20. Now I will ask you to state whether you made a survey according to these Davenport notes, so-called, from the point called for in the notes as the 101 mile and, if so, in what direction?

A. Yes, I made a survey from the calls given in that copy of field notes from the top of the Unicoy Mountain and the side of the Unaka Turnpike road, Northeasterly nearly to what is called for as the 86th mile reaching the North bank of the Tellico river.

D. 21. You mean you commenced at the Unaka Turnpike, which is commonly called the end of the 101 mile?

A. Yes sir.

D. 22. Is that stone still standing there?

A. There is a stone standing there with 101 on the stone. I first tested it to see whether it was on the line running South and found that it was.

D. 23. Is there any hickory tree standing there with 101-M on it?

A. I didn't see it.

D. 24. You have been there a number of times, haven't you Mr. Williams?

A. I haven't been there many times, about three times I think is all.

D. 25. Who was with you on these surveys?

A. Mr. W. D. Hale.

D. 26. As surveyor?

A. Yes sir.

D. 27. Y u had a party of chainmen and barriers?

A. Yes sir.

D. 28. Now running back Northeasterly from this supposed 101 mile stone at the Unaka Turnpike a distance of 15 miles to what might be the end of the 86th mile where did you find yourself?

A. I didn't run—we didn't run the full distance of 15 miles, a little more than 14¾ crossing the Tellico river and then measured the distance from there to the Holly tree on the Jenks Ridge ???? or at the foot of the Jenks Ridge.

D. 29. The Holly tree it is claimed bears the marks "86-M" on it?

A. Yes sir.

D. 30. And which it is claimed is on the line as contended for by North Carolina in this case?

A. Yes sir.

D. 31. Now how far did you end?

A. Approximately three quarters of a mile.

D. 32. From that Holly tree?

A. Yes sir.

D. 33. Above or below the Holly tree?

A. Below.

D. 34. Below the Holly tree?

A. Yes sir.

D. 35. Now, did you run a line South from this 101 mile point?

A. We did.

D. 36. How far?

A. Carried it to the Maple tree on the South bank of the Hiwassee river.

D. 37. What did you find about that line, whether it is on a due South line?

A. We found the present bearing to be about South 5 degrees West—that is starting from the Unaka Turnpike running South 5 degrees West we found marked trees for something like two miles—got down in some fields and didn't find any marks to the river—at the river we were apparently off the line and to the West of the line.

D. 38. How much?

A. Well we couldn't determine very accurately, but we thought something like six or seven or probably eight poles from the line as

ordinarily claimed there, but on reaching the maple tree we were about twelve poles to the East of it.

D. 39. You mean the line run South from the 101 mile tree or stone on the bearing that you pursued passed to the East of the marked Maple some 12 poles?

A. Yes sir, that indicating that the bearing should be about South 5½ degrees West.

2223 D. 40. Well now Mr. Williams at that time did you make any survey below the crest of the mountain from the 101 mile tree back along the line formerly covered by John R. McClellan upon which he erected mile stones?

A. I didn't at that time. I surveyed from Jenks Knob South westerly to the top of Beaver Dam Bald and saw I believe two of those mile stones and then in going back along the top of the mountain from Beaver Dam Bald to within some seven or eight miles of the Unaka Turnpike I saw three or four of those stones, and formerly in surveying there a part of the line between Jenks Knob and the Unaka Turnpike, I saw three or four of the mile stones.

D. 41. I will ask you if you found the stone erected by McClellan bearing on it the figures 86.15?

A. Yes, I saw that.

D. 42. Where is it erected?

A. It is located Southwest of the Jenks Knob between Jenks Knob and the Little Bald and nearly three quarters of a mile from Jenks Knob.

D. 43. On the crest of the mountain?

A. Yes.

D. 44. And you say about three quarters of a mile Southwest of Jenks Knob?

A. Yes.

D. 45. And therefore the same distance from where Jenks Ridge turns off down toward the Tellico river?

A. Yes sir.

D. 46. How far is that 15th mile stone erected by McClellan bearing on it 86 M from that Holly tree that is claimed by North Carolina as being the end of the 86th mile?

A. One and three quarter miles.

D. 47. Now I will ask you whether when you were at the 59th mile tree you surveyed any other of the calls preceding that tree?

A. I surveyed a mile North from the 59th mile tree by the calls given in the notes I had.

D. 48. Only that mile?

2224 A. Yes back of the 59th mile tree.

D. 49. Mr. Williams, I read to you from this little book exhibit to the deposition of W. D. Jones and claimed to contain a copy of the Davenport field notes the call is given therein as between the 58th and 59th miles as follows "South 25 West 320 poles, Red Oak 59th mile." Does that conform to the copy that you had in your possession?

A. Yes sir.

D. 50. Now that is the mile that you run back of the 59th mile tree?

A. Yes sir.

D. 51. There is a call upon the course given of 320 poles a straight line?

A. Yes sir.

D. 52. Did you survey that mountain top for a mile back from the 59th mile tree.

A. No, I didn't but I measured some offsets to the top of the mountain and estimated distances at other places.

D. 53. Why did you do that, why did you make that survey of that mile?

A. Well the mountain top is as straight as any place I know of on the State Line and I wanted to see how it would fit on that mile and where the mountain top is so straight as compared with other places. I did it purely out of curiosity to see how it would fit.

D. 54. How did it fit?

A. At the distance of 34 poles as measured on that line?

D. 55. Back from the 59th mile tree?

A. Yes, we crossed the head of a branch at about a distance of 10 poles from the top of the mountain; at 40 poles we passed a spring; at 60 poles I estimated the top of the mountain was 8 poles to the East of the line; and at 80 poles I estimated that the top of the mountain was about 6 poles; at the distance of 100 poles we run out on top of the mountain; at the distance of 160 poles we were within 3 poles of the top of the mountain and continued that distance at the top of the mountain; at a considerable distance, at the distance of 220 poles. I have a note saying top of the mountain about 10 poles to the right.

2225 D. 56. That would mean about 10 poles to the East?

A. Yes, at a distance of 240 poles I measured the distance to the top of the mountain to the East of the line 16 poles; at the distance of 308 poles I measured the distance to the top of the mountain to the West of the line 10 poles.

D. 57. So that between 240 poles and 308 poles you would cross the top of the mountain?

A. Yes sir.

D. 58. Now go on?

A. At the end of the line 320 poles was about 6½ poles from the top of the mountain.

D. 59. On which side?

A. On the East side.

D. 60. On the North Carolina side?

A. Yes sir.

D. 61. I am going to read to you the calls as set out in so-called Davenport field note book from the 59th mile tree Westerly to the 72nd mile tree, and ask you to compare them with the calls of the copy which you run that line, and tell me whether the copy you had follows the calls which I now read to you from the book - beginning at the 59th mile tree; then South 45 West 160 poles; South 25 West 160 poles, Hickory 60th mile in a low gap at the path from Equinot-

tey to Telassee; then South 20 West 60 poles; South 50 West 100 poles; South 20 West 160 poles, Red Oak 61st mile.

A. I have that differently. I have South 20 West 100 poles.

D. 62. Then South 20 West 60 poles, then South 60 poles; South 50 West, 100 poles; due West 100 poles, Locust 62nd mile; then South 75 West, 220 poles; then South 55 West 100 poles, Red Oak 63rd mile; then South 30 West 40 poles; South 15, West 80 poles; South 15 West, 80 poles; South 60 West, 120 poles, White Oak, 64th mile; then South 75 West, 320 poles, crossing Tennessee river to a large White Pine South side of the river at the mouth of
2226 a large creek, 65th mile; then South 80 poles up said creek; South 40 West, 80 poles; South 70, West 40 poles; South 60 poles; due West 60 poles, Spruce Pine, 66th mile; then South 65, West 80 poles; then South 20, West 60 poles; then South 70, West 40 poles; South 20, West 140 poles, Birch 67th mile at Chiogee path; then due West 140 poles; South 15, West 180 poles, Sycamore 68th mile; South 30, West 180 poles; due West 20 poles; South 35, West 120 poles, Maple on the East bank of said creek, 69th mile; South 30, West 320 poles, birch on the West bank of said creek, 70th mile, then South 40 poles; South 10; West 60 poles; due West 60 poles; South 30; West 200 poles, Pine, 71st mile; then South 35; West 80 poles; South 80; West 160 poles; South 30; West 80 poles, white oak, 72nd mile on a ridge between the aforesaid creek and Citico creek".

Are those calls that I have read to you with the exception that you noted, the same as they appear in the copy by which you run the line?

A. They are.

D. 63. Now I read to you, Mr. Williams, the calls contained in this book of field notes, Exhibited with the deposition of W. D. Jones, from the 86th mile to the maple at the Hiwassee River, and ask you whether or not the copy used by you conforms to those calls as set out in this little book. The call leading up to a holly tree, 86th mile as described in this book of field notes is as follows:

"South 60; West 320 poles". Is that the same as you have it on your copy Mr. Williams?

A. It is.

D. 64. Now I read to you the subsequent calls, viz: "South 20; West 80 poles; South 65; West 240 poles, red oak, 87th mile; South 80; West 320 poles, red oak, 88th mile; then South 80, West 100 poles; North 80; West 60 poles; South 50 West 120 poles; South 10 West 40 poles, Hickory, 90th mile at the head of Beaver Dam Creek, then South 10; West 100 poles; then due West 100 poles; North 60, West 120 poles, white oak, 90th mile; then due West 140 poles, South 70; West 180 poles, white oak, 91st mile; South 15;
2227 West 100 poles; North 80; West 160 poles; South 15; West 60 poles, red oak, 92nd mile; South 55; West 280 poles; North 45; West 40 poles, red oak, 93rd mile to the trading path leading from the Valley Towns to the Overhill settlements; North 45; West 80 poles; South 80; West 120 poles; North 25; West 120 poles, white oak 94th mile on said path; North 40, West 320 poles, white oak, 95th mile on said path; thence North 40, West 50 poles; North 70,

West 50 poles; South 45; West 80 poles; South 70; West 40 poles; North 80; West 80 poles; South 70; West 20 poles, white oak 96th mile on the top of the Unicoy Mountain; South 50; West 200 poles; South 30; West 120 poles, red oak 97th mile; South 40; West 160 poles; South 60; West 160 poles, chestnut tree 98th mile; South 45; West 220 poles; South 20; West 100 poles, white oak 99th mile; South 60; West 220 poles; South 20; West 120 poles, chestnut tree 100th mile; South 40; West 320 poles to a Hickory and rock at the wagon road the 101st mile at the end of the Unicoy mountain; thence South 15 miles and 220 poles to a post oak on the Georgia line at 23 poles West of the 72nd mile from the Nickijack old town on the Tennessee river. Then follows South 320 poles to a pine 103rd mile, crossing branch 252 poles to a Spruce Pine on the bank of Hiwassee river below the mouth of Cane Creek and runs up the bed of said river upwards of a mile to a Maple on the South side marked IXDRA; then the same course South 53 poles to a Holly the 105th mile; South 320 poles, Spanish Oak, 106th mile".

Now do those calls conform to the copy of calls used by you in doing your work on this line?

A. Yes sir.

September 5, 1911, at 1:00 P. M. the further taking of proof was adjourned till 2:30 P. M. at the same place.

September 5, 1911, at 2:30 P. M. the further taking of proof was resumed pursuant to adjournment.

2228 Present:

For Tennessee: Hon. Charles T. Cates, Jr., Attorney General of Tennessee, and Col. T. E. H. McCroskey.

For North Carolina: Hon. T. W. Bickett, Attorney General of North Carolina; Gen. Theo. F. Davidson, F. A. Sondley, Esq.; Mr. W. R. Hopkins.

JOHN L. WILLIAMS, resuming the stand for further examination, deposed and said:

Direct examination continued by Gen. CHARLES T. CATES, JR., Attorney General, on behalf of defendant, State of Tennessee:

D. 65. Now Mr. Williams, as I understand it, you made an actual survey according to the alleged Davenport field notes from the 58th to the 72nd mile?

A. Yes, from the copy of the notes which I had.

D. 66. And you also made an actual survey from the 101st as it is called, mile tree or mile point, back to in the neighborhood of the 86th mile?

A. Yes sir.

D. 67. And also from the 101st mile, so-called, Southward to that Maple which has certain marks on it?

A. Yes.

D. 68. Now why did you not survey that gap from the 72nd mile and the 86th mile?

A. I worked out from the 59th mile tree to about the 70th mile tree and I was notified to come to the United States court here at Knoxville in a suit that had been tried twice before and a new trial was granted for the second time and I was notified that there was a subpœna out for me and I came out on that account and quitting on the 72nd mile as called for in the notes.

D. 69. And you were a necessary witness in that case for the party that summoned you, as it was thought?

2229 A. I was an important witness for the complainant and had been in both trials.

D. 70. After you were released as a witness, what did you then?

A. I went to the 101st mile or the Unaka Turnpike.

D. 71. And Northeasterly to the Maple and Southwardly to the river?

A. First to the Maple on the South side of the Hiwassee river and then Northeasterly toward the Tellico rivet.

D. 72. Why didn't you survey that gap in between?

A. I didn't think I had time to finish the survey.

D. 73. I will ask you to state whether you were notified or summoned to be here on the 28th of August?

A. I was notified to be here.

D. 74. And you didn't have time to complete the survey before it was necessary for you to be here?

A. No sir.

D. 75. And was that the reason why you didn't complete the survey?

A. Yes sir.

D. 76. You had instructions to survey that line both ways?

A. I did.

D. 77. I read to you the notes from the book exhibited with the deposition of W. D. Jones, containing the so-called Davenport notes, the calls set forth in said book from the 72nd to the 86th mile, as follows: "South 30; East 200 poles; South 60; East 120 poles, Red Oak, 73rd mile; South 100 poles; South 15; East 100 poles; South 10; West 120 poles, Maple, 74th mile; South 25; East 160 poles; South 10; East 160 poles, beech, 75th mile, main mountain; South 25; West 320 poles, Spanish Oak, 76th mile in low gap; South 25; West 100 poles; South 60 poles; South 55; West 160 poles, Red Oak, 77th mile; South 20; West 10 poles; South 70; West 80 poles; South 40 poles; South 15; East 160 poles, Maple, 78th mile; South 15; West 100 poles; South 70; East 100 poles; South 30; East 120 poles, beech, 79th mile; South 20; West 260 poles; South 10; East 60 poles; beech, 80th mile; South 100 poles; South 60; East 220
2230 poles, Red Oak, 81st mile; South 15; East 200 poles; South 25; West 80 poles; South 40; West 10 poles, beech, 82nd mile; South 40 West 10 poles; South 50; West 160 poles; South 40; West 120 poles, Red Oak, 83rd mile; South 40; West 320 poles, Locust, 84th mile; South 10; West 120 poles; South 60; West 200

poles, Chestnut Oak, 85th mile; South 60; West 320 poles, Holly tree 86th mile near the head of the middle fork of Tellico River".

Do those calls as read to you correspond with the copy of the field notes covering that distance as furnished you and from which you worked down there in that country?

A. I didn't notice any difference in the calls.

D. 78. Then the calls are the same as the calls set out in the copy from which you worked?

A. Yes.

D. 79. It would seem from these calls that the line reaching a Holly tree—"Holly tree 86th mile near the head of the middle fork of Tellico river" is a straight line 320 poles long. I will ask you to state whether or not you run that line back from the Holly tree?

A. No, I did not.

D. 80. Well, what—did you ever run the last mile leading up to that Holly tree?

A. No, I run the first mile South of the Holly tree but I didn't the mile North or Northeast of the——

D. 81. You run the first mile South of the Holly tree according to these notes?

A. Yes.

D. 82. That is the mile called for as South 20; West 80 poles; South 65; West 240 poles, Red Oak, 87th mile?

A. I ran those calls from the Holly tree.

D. 83. What did you find in running that and where did they land you running those calls actually on the ground?

A. The end of the first course came out in the head of a broad cove on the side of the mountain; the second course ended down in a deep cove, or what is known as the Big Oak Branch and 100
2231 poles from the top of the mountain.

D. 84. From the top of the main mountain?

A. Yes.

D. 85. And how far off the Jenks Ridge?

A. Well at the end of the mile as measured by the Davenport notes I ran perpendicular to that line up the side of the mountain to the top of the mountain measuring 100 poles and that was 15 chains Southwest of Jenks Knob as measured on the top of the mountain.

D. 86. Southwest of Jenks Knob?

A. Yes.

D. 87. Would that be on the North Carolina side of Jenks Knob?

A. On the main top of Jenks Knob between Beaver Dam Bald.

D. 88. Was that the end of the first call?

A. At the end of the second call, at the end of the mile, at the end of the two calls.

D. 89. Now what else did you do in regard to that mile?

A. That was all. I then made a traverse of the mountain top from that point to Beaver Dam Bald.

D. 90. With what result?

A. I have the distance here, but it is not totaled in the note book. Shall I give the calls of that traverse?

D. 91. No, that is hardly material—let me go back to one of your answers to a question third or fourth back. At the end of what line was it that you were 100 poles off of the mountain top?

A. I started at the Holly tree, assuming that it was the 86th mile tree, and run South 20; West 80 poles. That course ended in the head of a broad cove on the West side of Jenks Ridge. I then run South 65; West 240 poles, making an allowance for the variation, and came out there near the Big Oak Branch, a stream running into the Tellico river, and from the end of that course and being the end of the mile I run perpendicular to that line to the top of the mountain and measured it, a distance of 100 poles.

2232 D. 92. So the end of the 87th mile measured, according to these notes from the Holly tree, shows 100 poles off of the top of the mountain?

A. Yes.

D. 93. On which side?

A. On the West side or the Tennessee side.

D. 94. Mr. Williams, I here lay before you a blue print copy of complainant's Exhibit "D", being a blue print copy of a map exhibited with the original deposition of the witness, D. R. Burns, in this case, and ask you whether you have laid down on this map the calls of the Davenport notes, so-called, as furnished you, beginning at the 59th mile tree in running Westerly and then beginning at the 101st mile tree, Unaka Turnpike, and running Easterly, reversing the calls?

A. Yes; Mr. Hale and I together platted the Davenport notes on that blue print, beginning at the 59th mile tree and platting the notes to the call the 101st mile tree, marking it on that blue print in red ink, and also made a plat from the notes beginning at the 101st mile tree on the Unaka Turnpike and platting Northeasterly and marking the line in yellow ink and placing the mile numbers along the line at intervals.

D. 95. Now I will ask you to state whether the plotting from the 59th mile tree to the 72nd mile tree on this map, Exhibit "D" to Burns' deposition, was also in accord with your running of the notes for that distance?

A. Practically so.

D. 96. I take it, however, that this plotting, beginning at the 59th mile tree and also as you run it, includes that discrepancy of 60 chains which we noticed between the copy of the notes as furnished you and the notes as laid down in that little book?

A. Yes, that plat was made from the same calls, differing apparently 60 poles.

D. 97. In other words, the last call in the line leading to the 60th mile circle was both run and plotted by you as 100 poles, when the notes as laid down in that book call for 160 poles for that line?

A. Yes.

D. 98. What would be the effect of that line to the 72nd 2233 mile tree if you had included that 60 pole discrepancy to which we have just referred?

A. It would extend the line further South 60 poles at three points

D. 99. Then at the 72nd mile circle you would have been 60 poles further from the top of Fodder Stack ridge than you actually surveyed and plotted?

A. Yes, approximately. I believe the call is South 20 West 160 poles, and it would have been further away from the Fodder Stack.

D. 100. Those lines run from the 59th mile tree West and from the 101st mile tree East do not seem to coincide. Where do they pass or cross each other?

A. About opposite the point marked "Grassy Top" on the blue print, and also about opposite the head of a stream marked "Rough Ridge Creek".

D. 101. You mean Grassy Top and Rough Ridge Creek as laid down by Mr. Burns on this map, Exhibit "D"?

A. Yes. The lines also cross twice, the two points being close together, near the point marked "Junction"; again cross each other near the point marked "Big Fodder Stack" on the blue print.

D. 102. Now running the line according to the so-called Davenport notes from the 59th mile tree, Westwardly, where does the 101st mile end—how far from the 101st mile as laid down by Burns on his map?

A. It is nearly two miles and a half Southwest from the point shown as Unaka Turnpike on Mr. Burns' map.

D. 103. Running the line backward, reversing the calls from the 101st mile or the Unaka Turnpike, as shown on Burns' map, to the 59th mile, how far from the 59th mile as located on Burns' map do you land?

A. It is about $2\frac{1}{2}$ miles to the Northeast.

D. 104. On that same line running back from the Unaka Turnpike, between what miles do you cross Little Tennessee river?

A. Not having run the line continuously from the Turnpike to the Little Tennessee river I couldn't say. The river makes a large bend below the State Line.

2234 D. 105. By actually running that line from the 101st to the 86th mile and then plotting the remainder on this map of Burns, let me ask you between what miles does that line cross the Big Fodder Stack?

A. The 72nd mile on that plat would be to the West of the Fodder Stack ridge and the 73rd would be to the East of the Fodder Stack ridge. The line would cross to the North of the Big Fodder Stack.

D. 106. Running that line from the 59th mile tree to the 72nd mile tree, as you did, and then plotting the remainder Southwesterly, how many miles of said line run over into North Carolina?

A. Something like 20 miles down to the Unaka Turnpike.

D. 107. Mr. Williams, have you examined the courses and distances laid down by Mr. Gannett and Mr. Burns of their running of the line—along the mountain top from the 59th mile to that marked fore and aft pine or hemlock on the North bank of the river?

A. Yes, I have examined the map.

D. 108. How far back from the river, according to the calls and

the courses and distances given by Gannett and Burns in their testimony is the 64th mile tree?

A. By their measurement it would be a little more than 1,800 feet back from the Hemlock.

D. 109. Now Mr. Gannett states that he run that part of the line from the 59th mile to the Turnpike road. I will ask you to state whether you figured up the distance of the line so run by him according to the distances given in his testimony?

A. I did.

D. 110. How much is it—is that it according to your additions there?

A. Yes, I think that is correct—12,580.

D. 111. To verify it, let us turn back to this—look at his testimony and see if that was added up by you yesterday evening?

A. They are and I saw these figures written there.

D. 112. So that the distance run by Gannett from the 59th mile tree to the Unaka Turnpike is 12,580 feet?

A. That is what I made it, yes.

2235 D. 113. Then you took the additional distance as run by Mr. Burns as set forth in his testimony down to the river from the Turnpike and found that the 64th mile would end about 1,820 feet North of the river?

A. Yes—or North of the Hemlock tree.

D. 114. Now Mr. Williams, can you indicate on this map—a copy of Exhibit "D" to Mr. Burns' deposition—the point where the 64th mile would end on the undisputed line as run by Burns and Gannett, North of the river?

A. I can.

D. 115. Please do so?

A. I make a circle in pencil at the point.

D. 116. Can you put it in some kind of ink so that it can't be rubbed out—have you got any of that red ink?

A. Yes, I mark the point with a cross in red ink at the point.

D. 117. Now then run some kind of a mark out here on the map to designate that point and mark it 64th mile, 1,820 feet from marked Hemlock?

A. I mark it in red ink 64 M 1,820 feet from the Hemlock.

D. 118. Now by the same scale upon which Mr. Burns' map is made, draw me a line from that point which you have described as the 64th mile South 75, West 320 poles, being the course and distance called for in the alleged Davenport notes, between the 64th and 65th miles?

A. Mark it with a straight line in red ink as requested.

D. 119. Let me ask you here, Mr. Williams, so that it will not be necessary hereafter—was all this plotting done by you on the Burns map laid on according to the scale of this map?

A. Yes, 2,000 feet per inch.

D. 120. How much above the mouth of Slick Rock Creek as laid down on Burns' map does this line which you have just drawn from the 64th mile cross it?

A. As near as I can scale, about 970 feet.

D. 121. How far is the end of that mile line from the mouth of Slick Rock Creek according to the scale of Burns' map?

A. According to the scale it is about 1,600 feet.

D. 122. How far is the end of the 65th mile, as you actu-
2236 ally run it on the ground beginning at the 59th mile tree from the mouth of Slick Rock Creek as laid down on Burns' map, Exhibit "D"—I mean your running of the Davenport notes?

A. 136 poles.

D. 123. How many feet?

A. 2,244 feet.

D. 124. Now did you give that distance from your actual running, or from merely plotting of the line as laid down on this map?

A. From actual running.

D. 125. So that when you reached the end of the 65th mile as actually run upon the ground according to the Davenport notes, beginning at the 59th mile you were 2,244 feet from the mouth of Slick Rock Creek?

A. Yes sir.

D. 126. In what direction from the mouth of Slick Rock Creek?

A. Nearly West.

D. 127. In running that line according to the Davenport field notes from the 59th mile tree to the end of the 65th mile, how far from the end of the 65th mile was it that you crossed the river?

A. We came to the North bank of the river at 98 poles from the 64th mile.

D. 128. How many feet in 98 poles?

A. 1,617.

D. 129. Well then assuming that the river there is about 330 feet wide the approximate width as testified by Mr. Burns, how much of that line as you actually run it would be on the Southwest side of the river?

A. Well we crossed the river diagonally, and the line ran in the river for a considerable distance. A little more than 2,800's of that mile of line was on the South side of the river.

D. 130. Now Mr. Williams if you had included the 60 additional poles up here between the 60th and 61st mile which you omitted because of discrepancy in your notes, this 64th mile circle would be just about 60 poles nearer the river, wouldn't it.

2237 A. Well, about that I should think.

D. 131. And the end of this 65th mile as laid down by you on this map and as run by you would have been about 60 poles further Southwest from the mouth of Slick Rock Creek, wouldn't it?

A. Yes, probably not as much as 60 poles, but it would have been further Southwest.

D. 132. Why do you say "probably not as much as 60 poles." Just explain that briefly?

A. Owing to the difference in directions. The call of the course where I had 60 poles left out is South 20 West I believe, while this mile course crossing the river and Slick Rock Creek is South 75 West and it makes a considerable difference in the direction of the lines.

MAPS

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D. 133. Now take the bearing—that is the course from this point here you have laid down the 64th mile according to the running y Burns of the undisputed State Line to the mouth of Slick Rock reek and tell us what it is?

A. I have already measured that about as near as I could and it approximately North 86 West.

D. 134. Approximately North, 86 West?

A. Yes.

D. 135. You mean you have measured it on this map?

A. Yes.

D. 136. What is the difference in degrees between North 86 West nd South 75 West?

A. That would be 19 degrees, but making allowance for the variation and taking that off there would be a difference of about 14 degrees—13½ to 14.

D. 137. How did you get that variation which you allowed on all hese lines?

A. By running the due South line from the Unaka Turnpike the earing was calculated, and that difference made in running all of hese lines—that is, we found the bearings were 5 degrees different ow them what they were or as shown on those field notes.

D. 138. Now Mr. Williams, I will ask you to file this copy 2238 of Exhibit "D" with the additional lines, concerning which you have testified laid down on it, as Exhibit "AA" to your leposition?

A. I do so as requested.

(Here follows map marked Def'r AA, p. 2238a.)

D. 139. Now Mr. Williams I present to you a plot entitled "Plot of State Line claimed by North Carolina and line surveyed and plotted from each end by Davenport notes scale 1 inch 2000 feet," and I will ask you to state whether you prepared that plot?

A. I did.

D. 140. Now explain how you laid down or from what you laid down the line between the States as claimed by North Carolina?

A. From the 59th mile tree to the point shown as Big Fodder Stack the line was plotted from Gannett's and Burns' notes. From the Big Fodder Stack around to about the point marked 78 figures cut in rock by McClellan, it was plotted by notes of Mr. Hale's survey; from about that point on to Jenks Knob and to the Southwest of Jenks Knob to about Beaver Dam Bald by my own notes, and from the points marked 93-8 to the forks of the mountain where Lick Ridge makes off was also by my own notes with some additional tie lines made to Mr. Hale's notes.

D. 141. Then as I understand it, the heavy black line with little circles along it and on it from the 59th mile to 101 indicates and represents the line between the States as claimed by North Carolina?

A. Yes.

D. 142. From the 59th mile tree down to where it reaches the river and at the point where it turns down the river the line as you understand it is not in dispute?

A. No, there is no dispute on that part of the line as far as I know.

D. 143. I will ask you to file this plot as Exhibit "BB" to your deposition?

A. I so file it.

(Here follows map marked Def't's Ex. BB, p. 2238A.)

D. 144. Is this scale of this plot the same as the scale of the Burns map, Exhibit "D"?

A. Yes.

D. 145. I will ask you to state whether or not you have compared this black line, showing the North Carolina contention, with
2239 the line showing that contention laid down on Mr. Burns' map, Exhibit "D"?

A. I have in a general way, not particularly.

D. 146. What do the red lines on this map indicate—some of the lines are solid and some are dotted?

A. The solid red line running Southwesterly from the 59th mile tree is the line as actually surveyed on the ground; the solid red line running from the 101st mile to the Tellico river is the line as actually surveyed to the Tellico river. The dotted lines were not surveyed and were simply platted on that map from the calls in the field notes.

D. 147. From the calls in the so-called Davenport field notes?

A. Yes.

D. 148. Can you indicate on this plot "BB" where 1,820 feet would end North of the river from that marked fore and aft tree?

A. I can approximately.

D. 149. Now I see on this plot, Exhibit "BB" numerous notations in black letters, such as 95.6 cut in rock by McClellan running from Unaka Turnpike; 94.7; 93.8; 86, followed by the statement "figures cut in rock by McClellan" and 78 "figures cut in rock by McClellan." What do those notations represent?

A. They show the location of what we know as the McClellan mile rocks along the line from the Unaka Turnpike North.

D. 150. Is this one marked "86, figures cut in rock by McClellan," the one that has on it 86-15?

A. I don't recall just now whether it has the 15 on it or not, but all or practically all the rocks from the Tellico river to the Unaka Turnpike have both numbers, showing the stones numbered from Unaka Turnpike North and numbered the other way going beyond the Unaka Turnpike. I don't recall whether that one has it or not, but I think it has.

D. 151. When did you first see that one that has 86 cut on it?

A. About two weeks ago.

D. 152. Now is that the one to which you testified as being a mile and three quarters from the alleged Holly tree?

A. It is.

2240 D. 153. Now I want to call your attention to the South end of this map, Exhibit "BB" and the red line running from 101 to a circle in red marked "Maple" and ask you to state whether that represents the running of that part of the line by you from the Unaka Turnpike?

A. It does.

D. 154. I will ask you to state whether or not the Hiwassee river as you have laid it down at that point, so runs?

A. It is approximately correct. It crosses the State Line three times.

D. 155. I will ask you to state whether that line as run there on

the course given in the Davenport field notes at that place run
the bed of the Hiwassee river?

A. No, it does not.

D. 156. It crosses the river as you have indicated there?

A. Yes, and so recognized and admitted by the people livi
that vicinity and familiar with the land titles and grants at tha
ticular place.

D. 157. Then, according to this showing made by this line
ing the Hiwassee river as it is shown on Exhibit "BB" there
small territory belonging to North Carolina Southwest of the
and a bit of Tennessee Northeast of the river?

A. Yes, the point of the bend between the river and the
Line and on the North Carolina side is described in the title
as 30 acres and belongs to the estate of Sam Hickey.

D. 158. And is recognized as being in Tennessee?

A. As being in North Carolina.

D. 159. That is the 30 acres in the first bend of the river
you cross it?

A. Yes.

D. 160. Now what about the small parcel or tract in the
bend after crossing the river going towards the maple?

A. Probably 15 acres in that bend and belongs to Willia
Butler of New York.

D. 161. And is recognized as belonging in Tennessee?

A. Yes.

2241 D. 162. Mr. Williams, as you have plotted this line
the 72nd mile tree to which point you run it—that
line beginning at the 59th mile tree—it crosses the plotted li
tending from the Tellico river Northeasterly between its 80t
81st mile, doesn't it?

A. Yes, and near the 81st mile as shown on the line ru
in from the 59th mile tree.

D. 163. And between what miles of the line running fro
Unaka Turnpike Easterly does the 59th mile tree run ac
mean does the 59th mile tree line cross?

A. About half way between the 83rd and 84th mile circles

D. 164. Now I see the Tellico river as is laid down on thi
Exhibit "BB" Southwesterly numerous streams laid down o
Exhibit, such as West Fork of Tellico; Brookshear Creek;
Springs Branch; Presswood Branch; Moss Branch and Ki
Creek. State whether or not those are just sketched in or plo
from actually going over the ground?

A. The crossings as shown on that red line and so far
streams could be seen from the line are pretty accurately plat
then the heads of the streams and their general directions hav
located from the State Line so that all streams are pretty acc
shown. Of course between places they are sketched in.

D. 165. But at the crossing points they are put in from m
ment?

A. Yes, at the red line from actual measurements.

D. 166. From what did you put in this description or deli

Q. 171. Mr. Barrow is present, is he not?

A. Yes.

Q. 172. The Exhibit "A" contains four plats described as follows:

"No. 1. Plat(s) of the line settled along and marked by commissioners of 1821 as shown on their plat."

"No. 2. Plat of surveyed line claimed by North Carolina."

"No. 3. Plat of surveyed line claimed by Tennessee."

"No. 4. Plat of line made from Davenport field notes."

I will ask you to state whether or not you have examined that plat of tracing Exhibit "A" and compared it with the map of 1821 and also the copy of plat made by Mr. Barrow of his survey of the line as claimed by North Carolina?

A. Yes. I have made some examination of the plat shown there and more especially the tracing from the original map of 1821.

Q. 173. Now Mr. Barrow, in his examination after having identified that map and made it an exhibit to his deposition [illegible] was asked: "Now does the line that you have just spoken of as plotted from the field notes of William Davenport tally with the plat found in the archives of the State of Tennessee of that survey at that point" and his answer is: "Well it tallies almost exactly. I found two differences, one of them between the 21st and 22nd mile." Then again he was asked about this same matter as follows: "How do you find that these tally to the William Davenport field notes which I have now compared with the Commissioners' map of 1821?" A. "I only found three places where they differ at all." He states further "The first difference I found was between the 11th and 12th miles, the field notes call for South 70 East 154 poles." Then he was asked "Then coming to the next difference which you found" and his answer was "It between the 21st and 22nd mile," and then he was asked "What is the next you found?" And his answer was "Between the 95th and 96th mile." The next question is "What would you have to do there to make the two tally?" "A. There is one call in that mile in the field notes South 45 degrees West 80 poles, and you would have to plat North 45 degrees West 80 poles."

I will ask you to state whether you made an examination of those matters to which his attention was directed, that is a comparison of the map of 1821 with the Davenport field notes and state whether you found any other discrepancies and, if so, point them out—by pointing out first and then say second and so on.

A. Yes. I made a comparison of the copy of the field notes which I had with the 1821 map and I found a great many differences.

Beginning at the Northeasterly end of the line I found:

First. Between the 5th and 6th mile circles the 1821 map shows three courses and the Davenport notes show 4 courses.

Second. Between the 9th and 10th mile circle the map shows 2 courses and the field notes call for 3.

Third. At the 11th mile circle the 1821 map shows a slight turn in the line; the Davenport notes call for a turn of 65 degrees in the line.

Thirty-Three. At the 89th mile there is no stream shown for Beaver Dam; the notes call for head of Beaver Dam Creek.

2247 Thirty-Four. 90th to the 91st mile circles, map shows one straight line; the notes show a change in bearing of 20 degrees between courses.

Thirty-Five. Between the 91st and 92nd mile circles, map shows last course about North 45 West; notes call for last course South 45 West.

Thirty-Six. At the 94th mile circle, map shows straight line continued; notes show a change of 15 degrees.

Thirty-Seven. Between the 95th and 96th mile circles, map shows the 3rd course about North 45 West. Notes call for the 3rd course South 45 West.

D 184. What discrepancy is that in degrees?

A That would be a right angle.

D 185. About 90 degrees?

A Yes.

Thirty-Eight. Between the 96th and 97th mile circles, map shows one straight line; notes call for two courses differing in bearing about 20 degrees.

Thirty-Nine. 101, 104 & 105 mile circles, map shows straight line continued; notes call with bed of the river; also at the 103rd mile circle no stream shown and notes call for crossing a branch.

D 186. Now I will invite your attention to a comparison of Burroughs on his Exhibit "BB," your Exhibit "CC" of the map of 1821 and ask you to state whether you have examined that, and whether you discovered any discrepancies between his tracing of the map of 1821 and the map itself, if so, point them out?

A I think this map is exactly like another copy I examined, both purporting to be tracings of the 1821 map. They look exactly alike and I see no difference in the one I examined and made some notes on.

D 187. Have you got that one with you?

A No. I haven't it here, but I can find any difference in it though the same as the one I did compare.

D 188. The one that you used in this comparison was a duplicate of the one furnished by me as the one coming from Mr. Burns.

A I can't see any difference in this and the one I ex-
2248 amined. It showed an error in the first mile; it showed one course for the whole mile when the original map showed 2 courses.

Between the 60th and 61st mile circles it shows 3 courses while the original map shows 4 courses.

Between the 65th and 66th mile circles, he shows 5 courses, or else he shows the mile circles moved up *up* one course. The 1821 map shows 4 courses.

Between 66th and 67th mile circles he shows 4 courses or mile circle moved up one course; the 1821 map shows 5 courses; the 1821 map shows 5 courses or else shows the mile circle one course back.

Between the 76th and 77th mile circles he shows 2 courses, while the 1821 map shows 3 courses.

Between the 77th and 78th mile circles he shows 3 courses, the 1821 map shows 4 courses.

Between the 81st and 82nd mile circles he shows 2 courses the 1821 map shows 3 courses.

Between the 92 and 93rd mile circles he shows 1 course the map of 1821 shows 2 courses.

Between the 95th and 96th mile circles he shows 5 courses, the 1821 map shows 6 courses and there is also a difference in these miles of the degrees of the lines between 96th and 97th mile circles. He shows one course, the 1821 map shows 2 courses.

D. 189. Now I will ask you to state whether or not you have examined and compared these tracings by Burns of the map of 1821 on your Exhibit "CC" with his tracing of the Davenport field notes as shown on that map?

A. I have.

D. 190. I will ask you to state if in nearly every instance his change as shown in his tracings of the map of 1821 was to make it conform to his tracings showing a plot of the Davenport field notes?

A. Most of them appear to be, yes.

D. 191. Now I want to ask you to examine the courses of the 66th mile as laid down on the original map of 1821, which is here before you, and I ask you to state what is the course of the last line 2249 in that mile as shown on this map of 1821?

A. It appears to be about due South.

D. 192. Now I will ask you to examine his plotting of the map or alleged tracing of the map of 1821 as shown on your Exhibit "CC" and state what is the course of the last call in that 66th mile as he has shown it on that tracing?

A. It appears to be about West.

D. 193. Due West isn't it?

A. Looks to be about West.

D. 194. Now I will ask you to refer to the alleged Davenport field notes in the original book here, and state what is the course of the last call in the 66th mile?

A. Due West 60 poles.

D. 195. So that at this point Burns' tracing of the 1821 map as shown on Exhibit "CC" discloses a change from the course as shown on the map itself from due South to due West to make it conform to the call in the Davenport notes?

A. It appears that way on the tracing.

D. 196. Whatever the purpose may have been?

A. Yes.

D. 197. Now then I will ask you to state whether in plotting or tracing this map of 1821, as shown on Exhibit "CC" he made any alteration in the courses as shown on the map between the 71st and 72nd mile?

A. I didn't detect any changes in the tracing, both copies are the same.

D. 198. Now in laying down the Davenport field notes as shown on this Exhibit "CC," did he make any alteration in those field notes between the 71st and 72nd mile?

A. Yes he did. The course called for South 30 West. He seems to have changed it to South 30 East and makes it in the same straight line with the next course South 30 East.

D. 199. Does the map itself show a straight line between those two points?

A. It does.

2250 D. 200. I mean between the end of the last call in the 72nd mile and the first call in the 73rd mile?

A. The map of 1821 does not show a straight line, but shows a turn in the line at the 72nd mile circle.

D. 201. Now let me call your attention to the plotting of the Davenport field notes as shown on this Exhibit "CC" between the 67th and 68th miles, and I will ask you if he has made any alteration from the notes in laying them down on his plat?

A. The tracing conforms to the notes in having the same number of courses that the notes call for, when the map of 1821 is different from the calls.

D. 202. Well now examine his plotting of the Davenport notes on this Exhibit "CC" and tell me whether or not the line which is called for between the 67th and 68th mile circles in the Davenport field notes is not due West 140 poles and if he hasn't plotted it North 83 West?

A. I didn't make any measurements of the angles on his plat at all.

D. 203. Do you know of any reason why the course between the 95th and 96th miles called for in the Notes "South 45 West 80 poles," should be arbitrarily changed to North 45 West as plotted by Mr. Burns?

A. No, unless it is because the map appears to show that.

D. 204. Mr. Williams, after your examination and surveying on the ground and your consideration of these so-called Davenport field notes as applied to conditions found by you on the ground, I will ask you to state whether, in your judgment, this map of 1821 was made from those field notes?

A. I can't think it was when there are so many differences.

D. 205. I will ask you to state whether or not, in your opinion, the report of the commissioners of 1821, copies of which you have often read and which is here again shown to you could have been made from these Davenport field notes?

A. I don't think so.

Mr. SONDLEY. State of North Carolina objects because merely matter of opinion without foundation in fact.

D. 206. I will ask you to state whether, in your opinion,
2251 whether the Davenport field notes, so-called, conforms to the description of the line between the States as set out in this report of the commissioners in this report of 1821?

Mr. SONDLEY. State of North Carolina objects as involving a question of opinion and not of fact.

A. There is such a wide difference between the report of the com-

missioners and the calls in those field notes that I can't think that the report of the commissioners was made from such field notes.

D. 207. Do you recall anything in those field notes that calls for the top of the mountain any where along that line?

A. There are two points that I remember—one is the 75th mile to main mountain, or probably they just say main mountain, and the other is at the 90th mile at the top of Unicoy mountain, but I don't recall any single place in the notes where they say running with the top of the mountain.

D. 208. I will ask you to state whether Mr. Williams after your further examination on the ground and territory itself in the light of these field notes or anything else that you have discovered you have in any way changed or altered your opinion as to where the location of the true line between the States is at the disputed points?

A. No I have not. Since trying to run the Davenport field notes and having failed to fit them to anything they have made no change in my opinion about the matter.

D. 209. That is, that the line between the States is according to the Tennessee contention. Has your opinion in that respect been altered or confirmed according to your running of the line in accordance with the Davenport field notes?

A. They have been confirmed when I found the field notes would not fit.

D. 210. I call to your attention the notes of Mr. Burns' survey from the mouth of Slick Rock Creek up that creek as set out in his deposition given at Asheville on May 1st. The first mile ending with the call North 73 degrees 37½ minutes, West 840 feet, and ask you to tell me how many North calls are in that line?

A. There seems to be three.

2252 D. 211. Are there any North calls in that line from the 65th mile tree to the 66th mile tree according to the Davenport notes?

A. No. As I remember there are none from the 65th mile up to the 75th.

D. 212. How many North calls has Mr. Burns in his running of that line as shown by his notes incorporated in his deposition from the mouth of Slick Rock Creek to Junction?

A. I count 20.

D. 213. Mr. Williams, I will ask you to state whether you have in your possession what purports to be a map of East Tennessee and Western North Carolina made about the year 1876 by Charles Waring, a civil engineer?

A. I have.

D. 214. Please file it as Exhibit "DD" to your deposition?

A. I do so.

(Here follows map marked Def't's Ex. "DD" to Dep. John L. Williams.)

MAPS

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Mr. SONDLEY. State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly.

D. 215. I will ask you to state how this Waring map, Exhibit "DD," shows the State Line to run between the Little Tennessee River and the Tennessee River?

Mr. SONDLEY. State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly.

A. Shows it is running with the top of the mountain.

D. 216. To the point where it turned due South to the Hiwassee River?

A. Yes sir.

D. 217. I will ask you to state whether it is running around or across the Tellico river?

Mr. SONDLEY. State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made
2253 it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly, and because the question is leading.

A. Shows it is running around the head of Tellico river.

D. 218. I will ask you if it shows a stream somewhat East of the boundary line between the States and just South of the Little Tennessee river?

Mr. SONDLEY. State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly, and because the question is leading, and also because the paper speaks for itself as to what it shows.

A. It does show a stream at that point.

D. 219. What is that stream marked on this map?

A. It is called Cheoah Creek on the map.

Mr. SONDLEY. State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly, and because the question is leading, and also because the paper speaks for itself as to what it shows.

D. 220. I will ask you to state whether this map, Exhibit "DD," shows running away from the State Line Northwesterly a ridge or lead South of the Little Tennessee river in about the place where Fodder Stack ridge or lead is?

Mr. SONDLEY: State of North Carolina objects as there is no evidence as to the correctness of this map, or as to who made it, when or where, or whether they had any facts or data upon which to make it, or whether they represented the matter correctly or incorrectly, and because the question is leading, and also because the paper speaks for itself as to what it shows.

2253½ A. It does.

D. 221. I here show to you a map entitled "United States Coast & Geodetic Survey Mountain Region of North Carolina and Tennessee compiled by direction of A. D. Bache, Superintendent 1865, corrected to June 1, 1884, J. E. Hilgart, Superintendent, Scale 1 inch 10 miles," and ask you to file that as Exhibit "EE" to your deposition?

A. I so file it.

(Here follows map marked Deft's Ex. "EE" to Dep. of John L. Williams.)

MAPS

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D. 222. I will ask you to state whether from immediately South of the Little Tennessee river the main ridge of the mountain seems to be unbroken around to where the line starts due South toward Georgia?

Mr. SONDLEY. The State of North Carolina objects because the map speaks for itself.

A. Yes, it shows a continuous mountain.

D. 223. Now I will ask you to state what stream appears on this map, Exhibit "EE" just East of this main mountain and running into Little Tennessee river on the South side?

Mr. SONDLEY. The State of North Carolina objects because the map speaks for itself.

A. Chesuh Creek is shown on the map as running into the Tennessee river just above the mountain and line shown on it.

D. 224. That is just East of the mountain and just East of the line between the States as shown on the map?

A. Yes sir.

Mr. SONDLEY. The State of North Carolina objects because the map speaks for itself.

D. 225. Mr. Williams, was Mr. W. D. Hale with you on all of these surveys you made of these alleged Davenport notes?

A. He was.

D. 226. And assisted you, or you worked together in the preparation of these maps?

A. Yes.

D. 227. And the examination of the four tracings on your
2254 Exhibit "CC," which is a copy of Mr. Burns' Exhibit "BB"?

A. We worked together all the while.

September 5, 1911, at 5:00 P. M., the further taking of proof was adjourned to 9:00 o'clock A. M., September 6, 1911, at the same place.

September 6th, 1911, at 9:00 A. M., the further taking of proof was resumed, pursuant to adjournment.

Present:

For Tennessee: Hon. Charles T. Cates, Jr., Attorney General, and Col. T. E. H. McCroskey.

For North Carolina: Hon. T. W. Bickett, Attorney General; Gen. Theo. F. Davidson; F. A. Sondley, Esq., and Mr. W. R. Hopkins.

JOHN L. WILLIAMS, resuming the stand for further direct examination, deposed and said:

Direct examination continued by Gen. CATES, on behalf of defendant, State of Tennessee.

D. 228. Mr. Williams, I direct your attention to the lines upon which you laid down your running according to the Davenport field

notes Southwesterly from the 59th mile tree and, while they show how it is upon the map, I will ask you to state whether and to what extent, if any, these lines as actually surveyed by you according to said notes conform to the top of the mountain North of the Little Tennessee river as you found the mountain to be and as it appears to be laid down on Burns' Exhibit "D," and your Exhibits "AA" and "BB"?

A. By taking the scale of the map the distances from the line as run and shown in red ink can be measured to the line as shown by Mr. Burns on his map at any point but I took the distances from the line run to the top of the mountain at various places. Beginning at the 59th mile tree and running Southwesterly with the course South 50 West, being 5 degrees variation allowed for the course, South 45 West at 40 poles I was 6 poles to the right of the top of the mountain; at 62 poles I crossed the top of the mountain; at 80 poles I was 10 poles to the left of the top of the mountain; at 118 poles I was 14 poles to the left of the top of the mountain; at 154 poles I crossed the top of the mountain again; at the end of the 160 poles called for in that course I was only 2 poles to the left of the top of the mountain.

2255

D. 229. What point was that?

A. At the end of the first course from the 59th mile tree running Southwesterly. Then taking the next course, South 30 West, being South 25 degrees West, with the 5 degrees variation added, at 78 poles I was 22 poles to the left or East of the mountain top; at 108 poles we crossed the top of the mountain; at 137 poles I was 26 poles to the right or West of the top of the mountain at Dalton Gap; taking the next course, South 25 West, being taken from South 20 West.

D. 230. You mean South 20 West, the call in the Davenport notes?

A. With 5 degrees variation. At 23 poles crossed on stream, at the end of the course 60 poles I was 22 poles from the top of the mountain.

D. 231. On which side?

A. On the West side, or the Tennessee side.

D. 232. Well, go on?

A. Taking the next course as given South 50 West, our course being South 55 West.

D. 233. That is, you added the variation there?

A. Yes.

D. 234. All right.

A. At 20 poles we were about 14 poles from the top of the mountain. That distance was not measured, we measured no distance at the end of the course, but at 83 poles we crossed a stream. By that time we were getting so far away from the mountain that we didn't measure the off-sets from the top of the mountain any more. Going down to the Turnpike road we run to the Northwest of the Cooper Camp Branch and the Turnpike road for a distance of 100 poles.

2256

D. 235. How far from the top of the mountain?

A. Well, it was about 60 poles.

D. 236. That is where your line crossed the Turnpike road?

A. Yes.

D. 237. Which, according to Mr. Gannett's measurement of the mountain from the 59th mile tree is something like two miles?

A. Be nearly two miles and a half.

D. 238. I believe we found yesterday by adding up Mr. Gannett's distances Westerly from the 59th mile tree to the Turnpike road we found it to be 12,580 feet?

A. That is my recollection.

D. 239. So now when you crossed that Turnpike road in running these Davenport notes you were some 60 poles North and West of the top of the mountain?

A. Yes, and I have the distance as measured along the Turnpike itself from the top of the mountain to the crossing.

D. 240. How much is that?

A. 85 poles as measured along the Turnpike itself.

D. 241. As measured along the Turnpike itself from the top of the mountain to where your line crossed the Turnpike?

A. Yes.

D. 242. Now proceed there from the river if you have anything to describe it.

A. I have no more distances measured from that point to the river.

D. 243. Now then let me direct your attention to the end of the 65th mile as run by you, even without including the 60 poles which was omitted from the 60th mile. How far is the end of the 65th mile from Slick Rock Creek as laid down on Mr. Burns' map and as you found it on the ground?

A. 136 poles.

D. 244. West of Slick Rock Creek?

A. Yes, West of the mouth of the creek.

2257 D. 245. Now if you added to that or had included in your survey the 60 poles omitted in running the 60th mile, how far West from Slick Rock Creek would be the end of the 65th mile?

A. Probably no further away from the creek than as shown, but it would have been something like 50 poles further from the mouth of the creek.

D. 246. Now Mr. Williams, at the end of the 69th mile as actually run by you according to the Davenport field notes were you on the East or West of Slick Rock Creek?

A. We were on the West side of the creek.

D. 247. How far West of the creek were you?

A. I didn't measure the distance and we were so far away from the creek that I couldn't estimate the distance, did not undertake to.

D. 248. Assuming your running of the line to be correctly plotted on Burns' map Exhibit "D", copy of which is filed as your Exhibit "AA", how far West of the creek is the end of the 69th mile?

A. More than a half a mile.

D. 249. Then state whether if you had not omitted the 60 poles omitted from the 60th mile, you would have been closer or further from the creek at the end of the 69th mile?

A. We would have been a little closer to the creek, but would sti
have been nearly a half of a mile from the creek.

D. 250. Now at the end of the 70th mile, state whether you foun
yourself on the West bank of Slick Rock Creek, or the West bank
any creek?

A. We were entirely away from the creek so far away that
couldn't tell much about the distance, in fact we were just abo
under Fodder Stack.

D. 251. About how far away from the creek?

A. As near as I could tell looking into the valley of Slick Ro
Creek I would think something like three quarters of a mile.

D. 252. About how far was the end of the 70th mile as run by y
on the Davenport field notes from where the line as laid down by M
Burns representing the North Carolina contention leaves Slick Ro
Creek according to the scale on his map?

2258 A. Fully a mile and a half.

D. 253. Now Mr. Williams, I direct your attention to t
Westerly end of Exhibits "AA" and "BB" and to the yellow li
running from 101 Northeasterly on Exhibit "AA" and the red li
running from the same point Northeasterly on Exhibit "BB", a
ask you to state if those solid lines up to Tellico river show yo
actual running on the ground of the Davenport field notes?

A. They do.

D. 254. State whether they show the distances from the top of t
mountain as represented on those maps?

A. Yes, it shows the distances by the scale of the map. The d
tances are not written on the map but I have them in my notes.

D. 255. And can be computed from the maps by the scale of t
maps?

A. Yes.

D. 256. Now you have referred, Mr. Williams, to adding in t
variation. I thought you had explained how you arrived at t
variation to Col. McCroskey. Tell us how you got the true va
tion which you used—how you arrived at it?

A. The magnetic change in the lines as called for in the Davenp
notes was gotten by running the due South line from the Turnp
to the Hiwassee river, and it was found that the bearing on that l
was South 5 degrees West; so that in running all the lines by
Davenport notes we allowed 5 degrees variation.

D. 257. Now I will ask you Mr. Williams whether since you ca
in from the mountains you have examined that large block of w
which was exhibited with the testimony on cross-examination of
Burns sometime last December and which is still in the possess
of the Clerk of this Court.

A. I have re-examined it.

D. 258. And that block which was taken from a tree by
Burns between the marked fore and aft Hemlock or Pine on
North bank of the river and the mouth of Slick Rock Creek.

A. I have examined that again.

2259 D. 259. Did you count the rings on it?

A. Yes.

D. 260. How many rings were shown?

A. I very carefully counted that a number of times and I have not been able to make but 87 rings or 87 growths in the block.

D. 261. I will ask you whether when you were on the mountain out there the last time if you re-examined the tree from which Mr. Burns cut that block?

A. I did.

D. 262. With what result?

A. When I first saw the block I felt that there might be something in the way of marks below that block. In going back to the stump, there is only a stump left, the tree fell down, having been cut on both sides. I examined that stump and found that the rings of wood below where the block was taken was separated as if there was a wind shake or bark had been loosened at some time. Cutting into that stump I found marks to continue nearly to the ground and found two distinct blazes, counting the same number of rings as shown in the block Mr. Burns brought here. Those blazes extending then to something near a foot of the ground, and this caused me to re-examine the block here. I examined those rings very carefully from two or three different points, and I never was able to make it but 87, and then coming here I recounted the block here.

D. 263. Then do I understand you that there were more blazes or whatever they were immediately below that block which Mr. Burns produced here?

A. There were two blazes below that block and I believe some marks were cut out when Mr. Burns took out the block. He may not have noticed this at all, and I feel pretty sure that the marks were continuous down the tree, and they had cut out some marks in chopping the lower block.

D. 264. Did you see some evidences there in the tree?

A. Yes.

D. 265. That the chop had been cut through the blaze?

A. That is the reason I examined into it by the rings being separated.

D. 266. If that block had been cut out in the Fall of 1910,
2260 how far back would those 87 annual rings carry you as indicating when the blazes were made, unless there were more than one annual ring for each annual growth?

A. The block being cut out in the Fall or Winter of 1910 should have shown 89 growths instead of 87. That would make the date of the marking in 1823.

D. 267. That is counting one ring for each year's growth?

A. Yes.

D. 268. How close to the river was that tree?

A. Standing right on the bank of the river within six or seven feet I should say.

D. 269. I will ask you to state whether Mr. Williams in trees in damp places or close to the river sometimes show more than one ring for a year's growth?

A. I have never found it so. I never cut out any blocks any

where that I ever saw any marked indication of there being two growths to the year.

D. 270. Your experience doesn't entirely coincide with the experience of Mr. Penshaw and other distinguished foresters?

A. I know that the foresters hold the opinion that trees sometimes make two growths and two rings in one year, and I don't deny that being so, but I never cut into a tree where I knew the age of the marks where there were two rings to one year's growth.

D. 271. Mr. Williams, I here show you a tracing entitled "A map of the Cherokee Country in North Carolina, surveyed in the year 1837 drawn from the returns of deputy surveyors by D. Deaver, Prs. Sr.," and bearing on its face the following certificate:

"STATE OF NORTH CAROLINA,
DEPARTMENT OF STATE,
RALEIGH, *Nov. 29th*, 1910.

I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify that on the attached sheet all the part of it North and West of the heavy red line is a true accurate and correct copy of a portion of "a map of the Cherokee Country in North
2261. Carolina, surveyed in the year 1837, Drawn from the returns of Deputy Surveyors by R. Deaver Pres. Sr."

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

Done in office at Raleigh, this 29th day of November in the year of our Lord 1910.

J. BRYAN GRIMES,
Secretary of State."

Carrying the seal of the State of North Carolina, and ask you to file this as Exhibit "FF" to your deposition?

A. I file it as requested.

(Here follows map marked Def't's Ex. "FF" to Dep. John L. Williams.)

MAPS

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Gen. CATES: The State of Tennessee here gives notice to North Carolina to produce on the hearing of this case for examination the original of said map in her possession among her archives at her capitol at Raleigh.

D. 272. Now I will ask you to examine this map, Mr. Williams, and state whether it purports to show the State Line and main dividing ridge from Little Tennessee river around to a point called on the map a Hickory and Rock where the State Line turns or supposed to turn due South to the Georgia line.

A. Yes, it shows the line on a mountain top all the way from the Tennessee river to the point where the line turns South and shows the mountains on the West side marked Unaka Mountain and at the Northeastern end calls it the Main Ridge leading to the Unaka Mountain.

D. 273. I will ask you Mr. Williams whether said map purports to show a ridge on the North Carolina side running from this ridge, which is marked State Line and Main Ridge Mountain and purports to be the divide of the waters running into Hiwasse river from those running into Cheoah river?

Gen. BICKETT: State of North Carolina objects.

A. Yes, it shows a ridge that appears to divide the waters
2262 and does divide the waters as shown on the map.

D. 274. Mr. Williams, I here show you two sheets of the topographical map made by the United States Geological Survey and being the Murphy sheet and Nantahala Quadrangle joined together so as to show both sides of the line along the place in controversy, copies of which are already exhibited in this case with the depositions of Messrs. Burns and Gannett, and which I now ask you to file as Exhibit "GG" for convenience in comparison here?

A. I file it as requested.

(Here follows map Marked Exhibit "GG" to Deposition of John L. Williams.)

D. 275. Now I will ask you to state whether on this topographical map, Exhibit "GG" there appears to be a mountain range or ridge running from the dividing ridge between North Carolina and Tennessee around the head waters of Tellico river and which ridge altogether in North Carolina divides the waters of Cheoah from the Hiwassee waters, or the waters running into Hiwassee?

Gen. BICKETT: We object to that too.

A. The map does show a ridge dividing the waters of Cheoah and Hiwassee.

R. D. 276. And what is it called on this map, Exhibit "GG"?

A. It appears to be called Snow Bird mountain, at least it joins the Snow Bird mountain and would be a continuation of the Snow Bird mountain as shown on the map.

D. 277. Now at what point of the dividing ridge between North Carolina and Tennessee does this Snow Bird mountain or ridge which separates the several waters from the Hiwassee waters join?

A. At the point marked McDaniel Bald.

D. 278. Is McDaniel Bald as you know it on the ground just East of the head waters of Tellico river?

A. It is.

D. 279. The scale of this map of the Cherokee Country, Exhibit "GG" to your deposition is what is indorsed on the map itself?

A. 200 poles per inch?

D. 280. Now I see noted on this map just South of the Ten-
2263 nessee River and crossing the mountain ridge a line called Cheoah Path. How far from the river according to the scale on said map is that Cheoah Path?

A. I scale it as 232 poles. I made a mistake, it should be 332 poles.

D. 281. That is 12 poles more than a mile?

A. Yes.

D. 282. From the Tennessee river where that ridge joins up to the line marked Cheoah Path?

A. Yes.

D. 283. How far Mr. Williams is it from the Tennessee river to that little gap in the mountain called Slick Rock Gap?

A. I never measured the distance myself.

D. 284. How far is it from the river to Slick Rock Gap according to the scale as shown on Hale's map which is exhibited with yours and his deposition in this case?

A. 364 poles.

D. 285. Only a difference of 32 poles between the showing by this map, Exhibit "GG" of the distance to Cheoah Path and the measurement from the river to Slick Rock Gap as shown on the Hale map?

A. Yes.

D. 286. Take the Burns map Exhibit "DD," copy of which is Exhibit "AA" to this deposition of yours. According to this scale, how far is the Slick Rock Gap from the river?

A. I scale it as 376 poles.

D. 287. Only a difference of 12 poles from Hale's map according to the scale?

A. Yes.

D. 288. Now Mr. Williams measure for me the distance of this ridge shown on Exhibit "FF" as the main ridge leading to the Unaka Turnpike, to the first decided turn to the left in that ridge according to the scale of that map, Exhibit "FF"?

A. I make that distance 955 poles which is almost 3 miles.

D. 289. Now Mr. Williams, I will call your attention to
2264 the Burns map, Exhibit "D," your map Exhibit "AA" to this deposition, and ask you to state if the first decided turn in the Tennessee line along Hangover ridge doesn't occur about Cold Spring Knob?

Mr. SOXDLEY: State of North Carolina objects because the witness has no right to swear what is the Tennessee line that being the contention in this case.

D. 290. I mean Mr. Williams the Tennessee contention as to where the line is up over Hangover Ridge?

A. Yes, the point marked Cold Spring Knob seems to be the general turn in the line.

D. 291. Now how far is Cold Spring Knob from the river and South from the river as shown on Burns' map, Exhibit "D," your Exhibit "AA"?

A. I scale that as about 909 poles or 2 84 miles.

D. 292. That is approximately three miles?

A. Yes, nearly 3 miles.

D. 293. That is, Cold Spring Knob is approximately 3 miles South of the river on the Hangover lead?

A. Yes.

D. 294. Now I will ask you to examine Mr. Burns' map, Exhibit "D," your Exhibit "AA," and state whether or not after leaving Cold Spring Knob the first turn to the right of the Hangover Ridge or in the direction of the ridge does not occur at Hangover mountain?

A. I think it occurs at Hao rather than at Hangover.

D. 295. I will ask you to state how far away Hao and Hangover are South of the river as shown on the Burns map, your Exhibit "AA" to your deposition—approximately 5 or 5½ miles, are they not?

A. As scaled by miles it shows on the map to be nearly 5½ miles to Hao.

D. 296. And not quite so far to Hangover?

A. About 5 miles.

D. 297. At Hangover while the bend is to the right it is not so decided as at Hao?

A. Yes, there is a turn to the right at Hangover.

2265 D. 298. How far is it to the second turn, or the turn to the right on this map of 1837, Exhibit "FF" to your deposition, as shown by the scale thereof?

A. It scales about 5 miles.

D. 299. Now then Mr. Williams, how far is it on this map of 1837

to the point where this turn to the right beginning at about 5 miles South of the river ends and then starts forward in rather a straight line?

A. 2 miles.

D. 300. That is 2 miles in addition to the 5 miles already measured South of the river which would make 7 miles South of the river on this map of 1837?

A. Yes, that is correct.

D. 301. About how far is Stratton Bald South of the river along the Hangover Ridge or lead as shown by either Burns' map Exhibit "D," your exhibit "AA" or the Hale map which is on file in this case?

A. It shows to be just a little more than 7 miles.

D. 302. Mr. Williams, I will ask you to state whether in your opinion it is possible for this line of mountain range running Southward from the Little Tennessee river on this map of 1837 to the first turn could represent a line South from the river running up Slick Rock Creek a distance of 5 miles, thence to the top of Big Fodder Stack, or a line South of the river running up with the Little Fodder Stack Ridge and lead to Big Fodder Stack?

Gen. BICKETT: North Carolina objects to that.

A. It couldn't represent a line up Slick Rock Creek, and I don't think it could represent a line up to Little Fodder Stack, but I am not familiar with the Little Fodder Stack lead, don't know exactly the shape of it. I have been over it but have not actually made a survey of it and don't know the exact shape of the leads running off Little Fodder Stack or Stiff Knee.

D. 303. Without regard to the shape of the lead running
2266 off of the river from Little Fodder Stack and Stiff Knee and thence around by way of Little Fodder Stack to Big Fodder Stack, how about the distance from the river to Big Fodder Stack by that route?

A. The distance would not correspond at all and then if it is assumed that that would be a line running up Little Fodder Stack the Cheoah Path as shown would be entirely wrong and very much too close to the river.

D. 304. How about the distance from the Little Tennessee river up by way of Stiff Knee and Little Fodder Stack lead to Little Fodder Stack—what is it, approximately?

A. I don't know, but it is greater than up the creek.

D. 305. And the distance to Big Fodder Stack up the creek as surveyed by Burns is approximately 7 miles, is it not?

A. Yes, I believe so.

D. 306. And while the distance from Little Tennessee River to this sharp turn to the left on this map of 1837 is only 3 miles isn't it?

A. Yes, scales to be only 3 miles.

D. 307. Now Mr. Williams, if it should be claimed that this point on the map of 1837 showing the second turn South of the river—that is a turn to the right going Southwesterly should the Junction or the place on the mountain known as "Junction," how would it

compare in distance from the Junction to the Tennessee river by way of Big Fodder Stack and Little Fodder Stack and down Stiff Knee down to the Little Tennessee River or by way of Big Fodder Stack thence down to Slick Rock Creek and down the creek as surveyed by Burns?

A. The line as shown on the map wouldn't compare with either of the routes by way of Big Fodder Stack.

D. 308. I believe that you stated that from the river as shown by the scale of this map of 1837 to the point on said map where it turns to the right is approximately 5 miles?

A. Yes.

D. 309. How far from Junction is the river by the North Carolina Contention along Big Fodder Stack ridge, thence down Slick Rock Creek to the river?

2267 A. About 10 miles.

D. 310. How far is it to the Little Tennessee River from Junction by way of Big Fodder Stack and thence by Little Fodder Stack ridge and its leads to the river—is it more or less than 10 miles?

A. Be more than that I think.

D. 311. If Mr. McClellan made it more than 3 miles, and that is correct, 3 miles should be added to the 10, shouldn't it?

A. I think not that much because I don't think his measurement checked out with theirs at Big Fodder Stack, because I think he was already ahead at Big Fodder Stack.

D. 312. I will ask you to state what this blue line laid down on your Exhibit "66" South from the river around to Stratton Bald represents—a line made by a blue pencil?

A. It represents the top of Hangover Ridge.

D. 313. And its lead down to the Tennessee River?

A. Yes.

D. 314. And the ridge and lead out to Stratton Bald?

D. 314. And the ridge and lead out to Stratton Bald?

attention to streams marked Hiwassee River down on the lower end of the map, or supposed to represent Hiwassee river and Cheoah river and the Tennessee river, and I will ask you to state whether those streams appear to have been accurately measured and plotted in, or just sketched in from what you know of the streams themselves?

A. From what I know of the streams they appear to be sketched in. The Hiwassee river is shown about right where the State Line strikes it on this map, and Cane Creek is shown about right, and in a general way the part of the river in line with the due South line is shown very well, and above the State Line I am not familiar with the river.

D. 316. If this line South from the point marked Hickory and Rock on the map of 1837 should be extended it would run right through up this stream that is supposed to be Hiwassee river?

2268 A. Yes, it would run nearly in the river the way that course is run.

D. 317. In fact it crosses the river twice as shown on the map?
A. Yes, but the bends in the river is shown approximately correct.

Cross-examination by Mr. SONDLEY, on behalf of the complainant, State of North Carolina:

X 1. How long did you say you had been surveying?
A. About 15 years.
X 2. I believe you said that in this matter you made a survey by the Davenport field notes for a portion of the way of this controverted territory or admitted territory or both—is that so?
A. Yes.
X 3. Where did you start with your survey?
A. We first worked from the 59th mile tree to the 72nd as called for in the Davenport notes, and then from the 101st mile South to the Hiwassee river and again from the 101st Northeasterly to the Tellico river.
X 4. And in making these surveys you say that you made them in accordance with the Davenport field notes?
A. Yes, making an allowance for variation.
X 5. Of 5 degrees?
A. Yes.
X 6. You also, I believe, say that on a blue print of the Burns and Gannett map in this case you started with the 59th mile tree and plotted the Davenport field notes through in a red line to the neighborhood of the Hiwassee river?
A. Yes. Mr. Hale and I together made the plat from the field notes.
X 7. You then said, I believe, that you started at the Unicoy Turnpike and plotting backwards, you plotted in the yellow or greenish line on this blue print of Burns and Gannett the Davenport field notes backward?
A. Yes.
2269 X 8. Now those two lines you say plot the Davenport field notes on this blue print?
A. Yes.
X 9. The green line plots them reversing from the Unaka Turnpike back to the 59th mile?
A. Yes.
X 10. Did you make this survey that you made and these plattings of red line and green line as for the Davenport field notes upon your conception or under the direction of the State of Tennessee as to how those Davenport field notes should be platted on that blue print?
A. I did it at the direction of the Attorney General of the State of Tennessee.
X 11. If you wish to modify that answer I will wait until you have made that modification. I do not know whether you do or do not.
A. Before making the survey the Attorney General of Tennessee asked me what I thought about the lines fitting and I told him that I had already tried the lines by plotting enough to know that

they would not fit. He then asked me to go and make these surveys and see how they would fit on the ground.

X 12. I also wish to enquire whether or not this survey that you made as from the Davenport field notes and these lines that you plotted as those of the Davenport field notes were really the Davenport field notes as you were directed to lay them down, or were they an independent conception of yours?

A. They were the calls of the field notes as surveyed on the ground.

X 13. Who directed you to lay them down as you have laid them down—who asked you to lay them down there—by the side of those lines as you have laid them down?

A. The Attorney General of Tennessee.

X 14. And they do represent the Davenport field notes correctly from the standpoint that you take?

A. I think they do, with the exception already mentioned where I had the field notes wrong.

2270 X 15. That is the 60 poles?

A. Yes.

X 16. Now start there at the 59th mile, will you, where you started with your red line. The next mile is said to be at a Hickory, the 60th mile, in a low gap at the path from Equinottey to Tellassee. Where did you find that Hickory?

A. I didn't find any.

X 17. Where was the low gap you ended in?

A. I was not in the gap, I was to the West of the mountain on the Tennessee side.

X 18. Where was the Equinottey path at Tellassee you stopped at?

A. Just about the end of the mile.

X 19. What side of it—was it in front or behind—where was it?

A. It was just a little behind the end of our mile. I don't know that that was the name of the path but there was a path passing through the gap and crossing our line just before the end of that mile.

X 20. Did you stop your line at the path?

A. No, we took the whole distance for the whole mile.

X 21. The next call is for a red oak. What was the character of that tree?

A. We didn't find any.

X 22. The next mile is at a locust for its end. Now what sort of a tree was that locust?

A. We couldn't find that.

X 23. The next ends at a Red Oak, at the 63rd mile. What sort of a tree was that Red Oak as to size and character?

A. We couldn't find it.

X 24. The next was to be for the end of the mile a large White Oak. What sort of a tree was that?

A. We couldn't find that.

X 25. Now from there you were to cross the Tennessee river to a

large White Pine. What sort of a Pine was that as to size?

2271 A. We didn't find it.

X 26. It is on the South side of the river at the mouth of a large creek. Did you end it at the end of the 65th mile at the mouth of a large creek?

A. We didn't end at a creek with that mile. We were only about half way on the mile when we crossed Slick Rock Creek.

X 27. The next place you were to go was up the creek about the—I mean from the 65th mile ending—up what creek did you go then immediately?

A. We didn't go up the creek, and from that point on we followed the courses and distances without regard to anything else, not having found anything to that point, we didn't hunt for anything further named in the notes.

X 28. So then did you go to a Spruce Pine at the end of the 66th mile?

A. No.

X 29. Didn't hunt for it?

A. No sir.

X 30. Then did you go to a Birch at the end of the 67th mile?

A. No sir.

X 31. Hunt for it?

A. No.

X 32. Did you stop that mile at the end of the Cheogee Path as called for in the Davenport notes?

A. No, but as I remember it was near that path.

X 33. Didn't stop at the Path—the next mile called for in the Davenport notes was at a sycamore at the end of the 68th mile. Did you find the Sycamore?

A. No.

X 34. Hunt for it?

A. I don't believe I did.

X 35. You next then were to run, according to the Davenport notes, to a maple on the East bank of the creek. Did you go to the Maple at the end of the 69th mile—did you stop at the Maple?

A. No.

X 36. The next mile, the 70th, was at the Birch—did you go to that birch?

A. No sir.

2272 X 37. It was to be on the West bank of that creek—did you stop on the bank of a creek?

A. No.

X 38. The next place you was to end the 71st mile at a Pine. Did you hunt for a Pine?

A. No.

X 39. The 72nd mile you were to end at a White Oak on a ridge between the aforesaid creek and Citico Creek. Did you end it there?

A. No.

X 40. End at a White Oak at all?

A. I don't think there were any White Oaks about that place where we stopped.

X 41. Did you end it on that ridge between that creek and Citico Creek?

A. Ended on Citico Creek very near.

X 42. The next was the 73rd mile to end at a Red Oak.

A. We stopped the survey at the 72nd mile running Westerly.

X 43. When did you take it up again as for the survey you made?

A. At the 101st mile.

X 44. Now in this interval between the 72nd and 101st mile I find sundry calls here for a Maple at the end of the 74th mile; a Beech at the end of the 75th; at the end of the 76th a Spanish Oak in a low gap; and a Red Oak at the 77th; a Maple at the 78th mile; a Beech at the end of the 79th mile; a Beech at the 80th mile; a Red Oak at the end of the 81st mile; at the end of the 82nd mile a Beech; a Red Oak at the 83rd mile; a Locust at the end of the 84th mile; and a chestnut Oak at the end of the 85th mile. Now a Holly tree at the end of the 86th mile near the head of the Middle Fork of Tellico river; and a Red Oak at the end of the 87th mile; and a Red Oak at the end of the 88th mile; and a Hickory at the end of the 89th mile at the head of Beaver Dam Creek; a White Oak at the end of the 90th mile; and a White Oak at the end of the 91st mile; and a Red Oak at the end of the 92nd mile; and a Red Oak at the end of the 93rd mile to the trading path leading from the valley Towns to the Overhill Settlements; White Oak at the end of the 94th mile on said path, or said to be on said path; then a White Oak on said
2273 path at the end of the 95th mile; then a White Oak on the top of the mountain—Unicoy Mountain—at the end of the 96th mile; Red Oak at the end of the 97th mile; a chestnut tree at the end of the 98th mile; a White Oak at the end of the 99th mile; a Chestnut tree at the end of the 100th mile; and a Hickory and Rock at the wagon road at the end of the 101st mile at the end of the Unicoy mountain. All those you platted only?

A. Yes.

X 45. Does that plat coincide and show any of those trees as you platted it for the red line or crooked line, or any of those streams?

A. No, it doesn't show any of the trees.

X 46. Show any of the streams they call for on the bank of the creek, etc.?

A. On this blue print those streams are already shown.

X 47. I will ask you if your red line or crooked line ends for the proper calls at those places?

A. They do not.

X 48. How for those trading paths and ridges as called for, do they end at those trading paths and ridges called for?

A. They do not.

X 49. You say you started at the 101st mile, and they call then as given in two details here on the Davenport notes, the first of which reaches a post oak on the Georgia line, and the second a more detailed statement. From the end of the 101st mile it runs South 320

poles to a white Oak. Did you stop at the White Oak in running from the 101st to the 102nd mile?

A. We couldn't find it, we found several white oaks but not with the marks.

X 50. The next is 103rd mile—did you go or get to a pine there?

A. There were some White Pines and Spruce Pines in that vicinity close down wher the mile ended, but we couldn't find any marks on them.

X 51. Did you stop at any one of them?

A. No sir, very close.

X 52. Did you make a Pine the end of your line?

A. No sir.

X 53. Did you cross a branch along there?

2274 A. We crossed a stream some 4 or 5 poles before reaching the end of the mile.

X 54. The next call was South 252 poles to a Spruce Pine on the bank of Hiwassee river below the mouth of Cane Creek. Did you go to that Spruce Pine?

A. There is no Spruce Pine standing on the bank of the river any where for about a mile as I now remember it.

X 55. Then it says it runs up the bed of said river. Did you run up the bed of the river?

A. No sir.

X 56. Did you go on the South side of the river to a Maple marked "IXDRA" as called for in the Davenport notes?

A. Yes.

X 57. You found that?

A. Yes. I didn't actually go to the tree on that survey, but I have seen the letters on it several times.

X 58. And it is marked "IXDRA"?

A. I don't know. I have seen some letters on the tree.

X 59. And then you plotted the location as mentioned down here in Red?

A. Yes.

X 60. And then South 53 poles to a Holly. Did you get to the Holly?

A. We stopped at the Maple tree.

X 61. Does your line show then to the Holly or not—in other words you stopped your red line at what point as you platted there?

A. On the blue print it stopped at about the 102nd mile on the map filed showing the surveys which is Exhibit "BB." It shows the line as stopping as the 105th mile in the Hiwassee river.

X 62. That exhibit also undertakes to show in red line the Davenport field notes plotted or not?

A. Yes, as surveyed and plotted from both ends of the line.

X 63. Now did you plot that in the same way as you did the red line on the blue print of the Burns map without regard to these calls for trees, etc.?

A. Yes, they were plotted by course and distance, only.

2275 X 64. Now how could you testify under those circumstances Mr. Williams that you had plotted the Davenport

field notes of that line by the red line when you absolutely ignored every natural object on them?

A. Well the Hiwassee river and the mouth of the creek and the Tennessee river are about the only natural objects given in the notes that can be found, and those trees we couldn't find. The only tree that we found on the line as described in the notes, except the Maple tree, was the tree claimed as a Holly, the 59th mile tree, as called for in the notes, is not a Red Oak, but is a Scarlet Oak and the Davenport notes call for a Red Oad.

X 65. Then how could you testify that you had plotted the Davenport field notes if you couldn't find the objects they call for?

A. I didn't say that I plotted the Davenport field notes any further than the courses and distances are given, because that is the only thing that I could do.

X 66. Then don't you think that you ought to state that then on the line, that you were plotting by courses and distances and not by the natural objects?

A. I don't know of any other way of plotting except by courses and distances.

X 67. Then you don't know that you can plot by natural objects?

A. Yes, if I had found them.

X 68. Then you don't know that you can't plot by courses and distances if you have natural objects?

A. I can only plot by courses and distances and if I have natural objects that I can find I can plot the courses and distances between those natural objects

X 69. The natural objects are a part of your calls that you are following?

A. Yes.

X 70. When you plotted only courses and distances, then you have not plotted the whole notes?

A. No, but then I couldn't find the things called for in the notes with any degree of certainty. He calls for a mouth of a
2276 creek, but I am not sure what creek it is, he doesn't say.

X 71. But as a matter of fact you didn't plot the notes but only the courses and distances of the notes?

A. Well I show the Tennessee river and I show the Hiwassee river and I show the streams crossed.

X 72. Did you plot the notes or not, or only the courses and distances Mr. Williams?

A. I plotted the courses and distances and the objects found on those lines as following the lines by the course and distance.

X 73. Did you plat on that the gap where the Equinottey Path is called for—that low gap?

A. No.

X 74. You can find a low gap, can't you, where the Eqinottey Path crosses?

A. Yes, I found that—I mean I found a gap.

X 75. And you didn't go to that low gap where the line crossed it?

A. I measured the distance to that gap.

X 76. And you don't make the line that you plotted go in either direction to where the Equinottey Path crossed?

A. No, because I don't know whether it was the Equinottey Path called for or not.

X 77. So you discarded the gap and the path too?

A. Yes.

X 78. You have often made, I suppose, surveys of tracks of land where natural objects were called for. Did you ever make it a rule in plotting in making your survey to discard the matter of calls all together for natural objects in making your plats?

A. I have on some occasions.

X 79. Well what sort of a survey do you think that is?

A. That is I have done so when it was necessary. If I have a line calling for West and some natural object given and I find by surveying that the direction to that is South 80 West, why then I take the course as found to the natural object, but if that point should be due North instead of West as called for, then I consider it out of reason.

2277 X 80. And you would simply discard the natural objects all together?

A. Yes.

X 81. And that is the principle that you have adopted in this instance—that you would discard the natural objects where they did not accord with the course and distance?

A. In surveying from the 59th mile I went back the second time and under took to make a survey that was along the course as given in the field notes, then off-setting at the top of the mountain and starting anew, and at the end of the 61st mile started anew, and I got no better results that way than the other way, inasmuch as the theory had been advanced that in the original survey they must have sighted from point to point and sighted the top of the mountain instead of surveying straight line.

X 82. Why didn't you start out and go directly East or West if it had nothing to do with it?

A. I don't understand what you mean.

X 83. That was the proper course to take, was it?

A. I did it because of the theory advanced that they had taken long sights and measured the top of the mountain and I wanted to see if we would follow that theory we would follow the State Line.

X 84. And you concluded it was not following it very well?

A. It didn't follow it any better than the other way.

X 85. So you started with courses and distances and when you started at the Tennessee river you crossed it the other way—don't the field notes which you are plotting by there tell you to end at the mouth of the creek?

A. Yes.

X 86. You could tell whether you were at the mouth of the creek?

A. Yes.

X 87. But you didn't start at the mouth of the creek?

A. Yes, I started at the mouth of the creek and it didn't follow the field notes and I abandoned the creek.

2278 X 88. I will ask you about stopping at the mouth of the creek. Did you stop at that at all?

A. No sir.

X 89. No doubt about that you had to stop at the mouth of the creek if you followed those notes?

A. That was the call in the notes from the 65th mile to the mouth of the creek.

X 90. Now then I want to ask you Mr. Williams if you really think as a surveyor in starting out to run a line of miles and miles in length where natural objects were called for that it was a fair representation of the notes you had to discard all natural objects and in some instances to go for miles and never hunt them?

A. It wouldn't have been fair if we could have found the trees called for, or if we could have found the other things with any degree of certainty. In making a survey I always try to find the objects mentioned in the calls from which I am surveying but when I hunt until I feel satisfied that they can't be found, then I don't know what else to do except to go by the courses and distances alone. We hunted every point from the 59th mile tree down to the 64th trying to find those trees, we must have hunted half of the mountain top for those mile trees and we couldn't find them.

X 91. So when you got over where the tree was said to be expressly on the bank of the creek and the other bank given you didn't go to hunt the tree at all?

A. Not while on the survey. I did afterwards try to find them.

X 92. But you didn't while you were making that survey?

A. No sir.

X 93. You found marked trees up Slick Rock Creek, didn't you?

A. I saw a number of trees that had been blocked. I never saw any trees with the State Line marks on them.

X 94. Did you know when you went to making this survey that you are talking of and this plotting that you were distorting that Davenport field notes that the State of North Carolina has introduced in evidence in this case?

2279 Gen. CATES: The State of Tennessee objects to the form of the question, because it arbitrarily assumes that the witness has distorted the Davenport field notes.

X 95. Didn't you testify yourself that you didn't go down that creek, going up from the mouth of the creek?

A. I have gone up from the mouth of the creek in making that survey and in going to and from camp and to work.

X 96. The creek was there?

A. Yes.

X 97. You didn't go down the creek after you crossed?

A. Not with the survey, no.

X 98. That was a departure, wasn't it? Wasn't it from the calls?

A. Well, yes.

X 99. And you knew that it was the contention of North Carolina that it did go up that creek?

A. Yes, I was familiar with that.

X 100. And the Davenport field notes called for a creek and you didn't undertake to go to a creek in undertaking to lay down the Davenport field notes?

A. Not in making the survey; I measured the distance from the line run to the creek two or three times.

X 101. I want to ask you as a surveyor if you would have excepted in discarding natural objects in a long survey like this that courses and distances would plat out right?

A. No, I wouldn't.

X 102. Hasn't it been your experience as a surveyor that it won't do it?

A. Yes.

X 103. And almost a universal experience too, hasn't it been Mr. Williams?

A. Yes, I think so.

X 104. And it, therefore, would not be a fair way of running a line where the natural objects were discarded of an old survey, would it?

A. No, I couldn't expect it to exactly correspond with the original survey.

2280 X 105. Then leaving out all questions of personal imputation which the Attorney General of Tennessee thinks is involved in the fact that it distorts, but which the State of North Carolina can't see any imputation in anybody at all—in fact you would not suppose if you were to go out there today and be shown those lines if the trees could be found by anybody if they would go along that line plotted there in red and the line plotted in green?

A. No.

X 106. Now did I understand you to say that the Davenport field notes did not call for the top of a mountain any where except it called for main mountain one time?

A. I believe I said from the Tennessee river to the Hiwassee river it don't make a call running with the top of the mountain.

X 107. Well did you or not as I understood you to say that it didn't call for the top of a mountain at any place except where it called for main mountain one time?

A. And the top of the Unicoy Mountain at another place. It is my recollection that I said between the Hiwassee river and the Tennessee river.

X 108. If you didn't say that, do you mean to restrict it to that now?

A. Yes.

X 109. Well, what do you say about this call "White Oak 72 mile on a ridge between the aforesaid creek and Citico Creek"—you think that had any reference to the top of a mountain?

A. Yes, I think probably it did.

X 110. When it called for a Spanish Oak at the 76th mile in a low gap, would you suppose that to have a reference to the top of a mountain?

A. Yes, I think so. I understand that as meaning the top of a mountain.

X 111. Well now I find here a call for the top of the Unicoy mountain at the end of the 96th mile as given by the Davenport field notes. Is that the top you mentioned just now that you spoke of?

A. Yes.

X 112. When it says later on at the end of the Unicoy
2281 Mountain you understand that to be on the top?

A. Yes.

X 113. Then you were a little mistaken that even between the Tennessee and Hiwassee it didn't call for the top in effect more than once or twice?

A. Yes, in a way I was. While it doesn't exactly say the top of the mountain, I understand it to mean that.

X 114. If the question really answered was that the Davenport field notes don't call for the top of the mountain at all you would like to modify that before you reach anything at all going South toward the Tennessee river?

A. I think I meant to say the Tennessee river and the Hiwassee river is what I had in mind, and then I think I said that the notes show—I mean that the notes don't say running with the top of the mountain but said running with the top of the mountain at some place.

X 115. And then when they say commencing at the trading path and at the top of the mountain and with the trading path, is it not a fact that that trading path runs along the top of the mountain?

A. I don't know. There is a path along the top of the mountain there at those places, and the path known as the Wachesia trail leaves the top of the mountain and goes out across the head of Wachesia Creek and by the Wachesia Springs and across the Unicoy Mountain North of the State Line, and I always had an idea that that was the trading path, but I don't know, and that leaves the State Line somewhere about the 95th mile as shown by McClellan's rocks.

X 116. Now this survey or purported survey that is represented by the Davenport field notes, or alleged Davenport field notes, because I don't understand you to swear that they are at all at any time, do you mean to say by that that there was no survey ever made at all from what these notes were prepared from?

A. No sir.

X 117. You do believe that at some time or other some-
2282 body made a survey and that these notes are a copy of that survey?

A. I believe there was some sort of survey made. I think probably they have some connection with that survey.

X 118. It would not be possible for a man who knew nothing absolutely about running over there to have made these notes from imagination?

A. No sir.

X 119. But these notes do represent some sort of survey made The survey must have been made by these commissioners rapidly, must it not, these commissioners of 1821?

A. Yes, the survey must necessarily have been made rapidly.

X 120. And through an extremely rough country, must it not have been?

A. Well a great portion of the State Line as I know it is very favorable country for surveying.

X 121. Is it not pretty high and pretty rough?

A. Some of it is rough, but upon the whole that mountain top so far as I know is pretty smooth surveying.

X 122. Wouldn't call it like valley surveying?

A. I can do more work there and make more miles there per day and more per week on that mountain top than in farming territory that I have surveyed in.

X 123. Don't you have to climb some steep places?

A. Yes, but it is open there more so than in other places and the woods are pretty well burned, and over a great deal of it the woods are open and it is very pretty work there on top of the mountain.

X 124. What you mean to say is easier than other work where the woods are in the way?

A. In open ground through the fields on level ground of course one can do more work.

X 125. And is it not a fact that you encounter bluffs and steep places in going along that high range of mountains in going up and down?

A. Good many steep places and some bluffs, but I don't consider it bad for mountain work.

2283 X 126. But it would be a pretty hard job to make this survey in less than 30 days from the Turnpike where they started from to the Georgia Line, wouldn't it?

A. Yes.

X 127. And the more rapidly it is made the less likely it is to be minutely correct?

A. Yes, necessarily.

X 128. You have discovered another thing in these notes that they usually call for degrees by 5 and 10's?

A. Yes I noticed that.

X 129. And from that you inferred that the survey while it was made was not minutely correct in reading the calls?

A. I studied about that, but I really don't know why they should make it even degrees.

X 130. But if you had an old survey of any kind that said that you should cross at the mouth of the creek you would think you had to cross the mouth of the creek if you could find a creek any where?

A. Yes, I would think it necessary in following those calls to cross at the creek if it could be found.

X 131. And if it said it went up a creek and gave you various trees on a bank of a creek specifically you would expect that that man found those trees on the bank of a creek, wouldn't you?

A. Yes I would expect by following the calls to find them there if at all.

X 132. And you would not expect that he went up a mountain range that had no creek from the line that he was running?

A. Yes.

X 133. And your testimony amounts to this—that not finding the natural objects there and not being familiar with them that you followed the line by courses and distances and that you did not suppose that is where the man had gone in making those notes?

2284 A. These notes are made from courses and distances, and I didn't suppose that any survey had been made there for the State Line.

X 134. But you did suppose that these notes had been made for some survey that they represent for a State Line?

A. Well I can't say that I have any very well informed—formed, I mean, idea about that, as I said in direct examination I never saw the book of notes, I only had the copy and I don't think I had seen any evidence in regard to the notes.

X 135. Now Davenport was a surveyor on that survey according to your knowledge about the matter?

A. According to the report, according to the Code of Tennessee.

X 136. And these purport to be Davenport notes, do they not?

A. Yes.

X 137. And they bear to your eye the impression of age?

A. I never had the book in my hands, I never examined it.

X 138. Suppose you look at that book and tell us whether you think that is a recent matter?

A. It looks old.

X 139. Now again as a surveyor I want to ask you some things about—in going along the tops of mountains and making distances apart, sometimes 320 poles, sometimes 100 and sometimes 120, would you understand, or would you not, that that man had actually put a compass upon every turn in the mountain top?

A. From the notes I wouldn't think so.

X 140. It was obvious that he was rather going the general turn at those specific points, rather than getting every minute detail of the turn?

A. Yes, the notes indicate that.

X 141. Now I believe you said Mr. Williams that the effect of your examination with a copy of these Davenport notes before you was to convince you that Tennessee was right in her contention. I wish you would please tell us how that had any tendency to show you that Tennessee was right?

A. I think what I said was that having found that I
2285 couldn't fit the Davenport notes to the line as known that it had rather confirmed my belief than otherwise.

X 142. How would that confirm the belief that Tennessee was right in her contention because the Davenport notes would not fit something?

A. Well I don't know that it was so much the notes themselves as being over the country and seeing all the ground again and studying the situation that the survey rather strengthened my opinion than the failure of the field notes to fit themselves.

X 143. So it was your observation upon the ground that effected

your belief and not the Davenport notes at all, although they were the occasion of your making a survey?

A. Yes.

X 144. As a matter of fact you don't pretend to say that the Davenport field notes can't be made to fit the Tennessee contention?

A. No sir.

X 145. Whatever you have platted there, the manifestation, whether correctly or not, the Davenport field notes would not fit the Tennessee contention, the lines on the blue print of Burns' map, or the map that you have made yourself in red would not show the Tennessee contention of the Davenport matters platted there, would it?

A. No sir.

X 146. But as a matter of fact the North Carolina contention does cross a mouth of a creek?

A. Yes.

X 147. And the field notes cross a mouth of a creek?

A. Yes.

X 148. And as a matter of fact the Tennessee contention does not cross a mouth of a creek?

A. No sir.

X 149. And furthermore it is a fact that the Davenport notes if followed from the mouth of a creek to about a distance of 10 miles would show a general bending from right to left about 10
2286 miles distance up the Tennessee river up the South side?

A. It does at about 7 miles and at 10 miles it shows a general bend to the right.

X 150. I am speaking of the general effect of the Davenport field notes from the river to about 10 miles, up the river, it would have that general effect if you would consider the whole thing, would it not, starting there at the Tennessee river and coming to here (Indicating on map), the general effect is a diverge from the circle around from right to left, isn't it?

A. Yes.

X 151. Now the Tennessee contention on the other hand would have the general effect of going the other way from left to right?

A. Yes.

X 152. And the North Carolina contention to that extent coincides to the Davenport field notes—that its general tendency is from right to left, isn't it?

A. Yes, they correspond in a general way.

X 153. I understand you to say you don't mean in a minute detail or anything of that kind. Now when we come to the Tellico territory, the North Carolina contention as you see, starting we will say from some point, as you now fix in the neighborhood of it, from the North and running in the direction of State Ridge to Jenks Knob, the North Carolina contention is nearly straight across?

A. Nearly so.

X 154. While the Tennessee contention is an elbow around?

A. Yes.

X 155. Now which more nearly does the Davenport field notes fit?

A. The North Carolina contention.

X 156. To that extent they more nearly fit the North Carolina contention?

A. So far as the shape goes they more nearly fit the North Carolina contention.

X 157. I wish you would take that map that has been called
2287 the Deaver map here for a moment please sir. Now I would like to ask you if starting from the Tennessee river according to this exhibit, which is said to be signed Deaver and something added—if the first direction given there as far as we will say 10 miles has a general trend from right to left?

A. To take the first 10 miles as shown on that map as a straight line then from that point going Southwesterly there is a change to the left.

X 158. By starting at the Tennessee river and going from there to a point about 10 miles from the river, according to that map, would you turn more *to* the left to right or right to left?

A. Turn more to the left.

X 159. Now the North Carolina contention would do that for that 10 miles?

A. No, it would hold pretty much the same direction for 3 or 4 miles further.

X 160. Now I am asking about 10 miles along the contention of North Carolina, wouldn't it tend running more from the river to 10 miles along that contention from left to right or right to left, or does it in the main?

A. Yes, it does in that 10 miles.

X 161. Now what is the Tennessee contention during its first 10 miles of distance?

A. It would turn the other way.

X 162. As a matter of fact that Deaver map really is not a correct representation for anything along there that we have been asking about for that first 10 miles?

A. I don't consider it a correct representation except it appears to be nearly correct when it strikes our survey.

X 163. It is not correct of anybody's contention along there?

A. No sir.

X 164. You happen to know anything about the history of that paper—how it happened to be in that shape for its Western boundary?

A. This map of the Cherokee country?

X 165. Yes.

2288 A. Only what I have seen on the map.

X 166. Now before I leave the Deaver map, I wish you would tell me how far it makes the State Line between North Carolina and Tennessee follow the mouth of Cheoah river?

A. I scale that distance as 3-44 100 miles.

X 167. On Exhibit "66", which you spoke of I believe, the blue line as representing the Deaver map. The red line is represented everywhere else, except in the proximity of the Tennessee river is what you mean?

(Mr. Hopkins pointing to the map).

A. I was not asked anything about the red lines or District 10 on this map, and it was only about the blue line as representing the Tennessee contention from the Tennessee river up to the point marked Hangover and Stratton Bald.

X 168. I wish you would tell me, please, the scale Mr. Williams of "GG" exhibit?

A. In round numbers the scale seems to be $\frac{1}{2}$ inch per mile.

X 169. Now please tell me how far from the mouth of Cheoah river to that blue line which you said would indicate the Deaver Western boundary at the Tennessee river—how far would that be on the Nantahala Quadrangle if that blue line be below the mouth of Cheoah river?

A. Approximately $\frac{3}{4}$ of a mile.

X 170. Then since the Deaver map makes that distance something over 3 miles, the blue line would not you think correctly represent the blue line as you put it down on Exhibit "GG" because that puts it only $\frac{3}{4}$ of a mile, the blue line, below the mouth of Cheoah river, because the Deaver map puts it over 3 miles?

A. The distance as shown on the Deaver map does not correspond.

X 171. On the Deaver map from the mouth of Cheoah to the point designated as the State Line does not correspond with the distance from the mouth of Cheoah river to the blue line on the Nantahala Sheet or Quadrangle?

A. No sir.

X 172. How much further down would you have to put that blue line below the Cheoah river to make it correspond as to dis-2289 tance with the Deaver line at the Tennessee river?

A. Move it down more than an inch—would have to be moved down the river more than an inch.

X 173. So that it would really have to be 3 times as far from the Cheoah river as it appears to be on plat "GG", would it not?

A. Yes.

X 174. Suppose you should go down the river as much as three miles from the mouth of Cheoah, would you go down as far as the mouth of Slick Rock Creek?

A. Go further.

X 175. About how much further would you go?

A. I should think a mile from having walked over the distance, I never measured it, I consider it something like a mile.

X 176. Now Mr. Williams, I believe in your examination in chief you undertook to locate, for Mr. Cates the point of the 64th mile tree where it ought to stand under the figure given by Mr. Gannett and Mr. Burns and you put it, as I believe, a red cross and run a line out indicating it?

A. Yes, that is approximately locating it.

X 177. Please re-consider it and see if you think that location is correct, starting now with the 59th mile tree—you ought to go 5 miles to get to the 64th mile tree, ought you not?

A. Yes.

X 178. Now how many feet in 5 miles?

A. 26,400 feet.

X 179. How far now would that be from the Tennessee river?

A. Calculating the distances as given in the field notes of Mr Gannett and Mr. Burns I made the point 1,820 feet back from the Hemlock. There are some errors in their field notes as they show on their face, and it may be that I didn't get it correctly located on that account.

X 180. Can you now tell me by an accurate calculation how far the Burns and Gannett map shows the 64th mile tree should be located from the Spruce and Pine near the bank of the Tennessee river?

A. Should be 2,095 feet back, by taking the distances
2290 given on the map by the plus stations make a difference of 275 feet from the location I made.

X 181. And as I understand, it would really throw that 64th mile tree North of where you have located it of 275 feet?

A. Yes, and would place it somewhere near the white circle North of the red cross mark.

X 182. Now please show me, or tell me, what would be the direction from this point that you have last indicated—would be according to the figures you have given of the 64th mile, its true location, what would be the direction to the mouth of Slick Rock Creek, taking it as you have taken the other?

A. The bearing is nearly due West, it is about North 89 degrees and 40 minutes West.

X 183. Now that allows a variation of 5 degrees of the present bearing?

A. That would be the true bearing.

X 184. Now?

A. Yes.

X 185. What would it be if you allowed that variation or subtracted that variation that you have been allowing on the Davenport notes survey?

A. Would be approximately South 85 West.

X 186. It would be a little more near do you think to say approximate, or can't you get at it on account of the difficult situation more nearly?

A. I think that would be within some 10 minutes of it.

X 187. Now suppose you would measure from that point that we have last spoken of as a location for the 64th mile to the mouth of Slick Rock on Burns' map, and say what the distance is, please sir, on a straight line?

A. Seems to be about 4,170 feet. I make that approximately .79 of a mile.

X 188. Something less than a quarter under a mile?

A. Yes.

X 189. Now have you noticed the trees along the top of the mountain where they were marked at any point in making this, the State Line trees?

A. I found marked trees from the 59th mile tree to the river.

X 190. Did you find enough to answer the question that I
2291 am going to put to you now—as to whether or not the course and distance had been taken between every turn, or that there had been courses and distances at points considerably distant from each other and then trees marked around without following the direction of the compass across?

A. Well I saw enough marked trees on the line from the 59th mile tree to the river to indicate a continuous marking around the top, but I never believed that but a small portion of those trees were the original marks. I found there were two sets of marks made in the same way as the State Line marks, but some of them were made 58 years ago, but I never saw many trees which I thought to be the original marks.

X 191. That, however, was in a territory that nobody questioned the line as running along the crest of the mountain?

A. Not to my knowledge there is no question about it.

X 192. Then if there was a survey made through there that sometimes would take a single course for a mile distance and sometimes for about a half a mile, the running and marking would have had to be around and not following the course of the compass across, isn't that true?

A. Yes, I think so. The marks there are sufficient to show that the marking was done around the mountain top.

X 193. Don't you think that the old trees there which you found that you recognized as 1821 trees would indicate that too?

A. I think so.

X 194. Now if you were to take that as the method of surveying and measuring around it would throw the 64th mile tree further back from the river than it would measure straight across with the compass calls, wouldn't it?

A. Yes.

X 195. Now do you know how far it would be around from the 64th mile tree as you have last talked of it that is somewhat North of the red mark you put up there about to the river or near the river at the fore and aft hemlock and then down the river to the mouth of Slick Rock?

A. No, personally I don't know how far it is, but I have walked over the ground, and Mr. Burns shows it about a mile and I think he must be about correct.

2292 X 196. When you say he shows it, I assume you refer to his map and notes?

A. Yes, and the notes too.

X 197. You spoke Mr. Williams of the point or space in which the State Line goes up Hiawassee river, and you said that you thought the line as recognized by people there would cross the river there. Is that right?

A. Yes, crosses the river three times.

X 198. I wish you would tell us what the Davenport notes show about that?

A. The Davenport notes say: "and runs up the bed of said river upwards of a mile to a Maple on the South side".

X 199. That is below the mouth of Cane Creek where it strikes the Hiwassee?

A. Yes.

X 200. Now please look at this map of 1821, the original of which is now before you, and tell me whether or not that line on that map crosses the Hiwassee river in that space and, if so, how?

A. Well, the 1821 map shows that the line crosses the river to the South side, or to about the South side, at the 104th mile, and then apparently runs along the Southwest edge of the river and not far from the bank of the river to where it leaves the river on the South side. As near as I can make out the line doesn't leave the river entirely from the time it enters it until it leaves it all together.

X 201. Is it not true, as a matter of fact, that the real line runs after crossing the South bank for some distance in the bed of the stream?

A. It shows unquestionably before leaving the river that it is in the river near the South side.

September 6th 1911, at 12:30 P. M., the further taking of proof was adjourned to 2:00 P. M., at the same place.

September 6th, 1911, at 2:00 P. M., the taking of proof was resumed, pursuant to adjournment.

2263 Present for Tennessee: Hon. Charles T. Cates, Jr., Attorney General, and Col. T. E. H. McCroskey.

For North Carolina: Hon. T. W. Bickett, Attorney General, Gen. Theo. F. Davidson, F. A. Sondley, Esq., and Mr. W. R. Hopkins.

JOHN L. WILLIAMS, resuming the stand for further cross-examination, deposed and said:

Cross-examination continued by Mr. SONDLEY, on behalf of the complainant, State of North Carolina

X 202. Now I want to ask your attention for a moment, please Mr. Williams, to the Deaver map exhibit, and enquire whether or not you think these mountain ridges or whatever they are designed for that run off with hachures from the dividing line between the States what they are intended to represent, or what you conclude they would represent—you catch what I mean—there seems to be lines with etching running off the dividing line between the States as laid down there making a sharp angle where they join, one going from that line and the other going to it?

A. I understand that to indicate a mountain and to indicate the dividing ridge between the waters of Hiwassee river and the waters of Cheoah and the Little Tennessee river.

X 203. What point do you understand it to be where this hachured line leaves the line marked as a State Line and goes to the East, I presume it is.

A. Well it appears to leave at the head of the Tellico river. It is

shown on the map as the East Fork of the Tellico river, and from my knowledge of that country I don't know of any prong that is called the "East Fork"—one known as the North Fork, and one known as the West Fork, and the other known as the Main Fork; and it may be that this is marked "East Fork" to designate it from the West fork. I am not sure it is what I know as the Main Fork.

X. 204. You couldn't be certain from that map what it
2294 really was designed to represent at its point of departure from the State Line?

A. I believe it to be the Main Fork of the Tellico river as shown, but I couldn't say that it is.

X 205. Well does any such a feature appear upon the Deaver map as this line of ridges or whatever you might call it that runs around the head of Tellico from the head of State Ridge to Jenks Knob?

A. No, I don't see any resemblance to the ridge leaving Jenks Knob from the main mountain to the Southwest, or in the dividing ridge leaving the State Ridge at the head of State Ridge. There is some resemblance to the point marked Jenks Knob on the other map then at any other place.

X 206. Your idea then, as I understand you, is that a good deal of this mountain business on the Deaver map is sketched in, is it not?

A. Yes, I think it shows on its face that it is to some extent sketched in work and that a portion of it is entirely sketched work.

X 207. And does that sketch work as I understand that term as used among surveyors that it is not a result of an accurate actual survey, but simply an approximate idea from the maker's knowledge of location generally?

A. If I should survey a line across Tellico river at a certain point and should survey another line across the river two miles below and another line a mile and a half below the second point I would make a sketch map of the river which would be correct at the points of crossing and would be sketch work between the points of crossing.

X 208. And might be incorrect as to any bend?

A. You mean between the crossings?

X 209. Yes.

A. Yes.

X 210. Or it might be correct, approximately?

A. Yes, it might be.

X 211. You spoke Mr. Williams in your testimony as I understand you of some discrepancies between the map of 1821 the original of which you have before you, and the Davenport field notes as we call them. The map of 1821 was made on a very small scale, wasn't it?

A. Yes.

2295 X. 212. What is that scale—you remember it?

A. It is marked 800 poles to an inch.

X 213. Now what is the difference between using a large scale and a small scale as *the* the accuracy of the result in platting—which is the more easy to make a more absolutely correct angle from at any point?

A. On the larger scale.

X 214. As a fact the more you reduce the scale, the more difficult it becomes subsequently to make an absolutely correct angle from actual measurement?

A. Yes, the smaller the scale the more difficult it is to measure the angles and distances also.

X 215. The first matter you called attention to was between the 5th and 6th miles on the map. Am I right?

A. I find from looking at my notes that I had marked and I think I testified the same thing as shown on my notes that the 1821 map shows 3 courses and that the Davenport notes call for 4 courses between the 5th and 6th mile circles.

X 216. What is the nearest difference between two courses as given in the Davenport field notes?

A. The least difference between two consecutive lines is 5 degrees.

X 217. That would make a very small difference in platting on that scale of the old map of 1821?

A. Yes, that would be a comparative slight turn in the line.

X 218. And rather difficult to either make or discern wouldn't it?

A. These courses are long enough to be shown separately on that scale.

X 219. The difference in direction would be slight—I mean the difference would be quite slight, wouldn't it?

A. The difference in direction would be a slight turn, yes.

X 220. Make very little difference in relation to the two points, one beginning and the other ending with those two calls, wouldn't it?

A. Yes.

X 221. The second objection I think you place between
2296 the 9th and 10th miles where you said the map showed 2 courses and the notes 3. Is that right?

A. That is right—said the map shows 2 courses and the notes 3.

X 222. The two lines there are very short too, are they not?

A. The two last courses called for in the notes is "due South 40 poles and South 10 West 52 poles".

X 223. Those are short distances on that scale, are they not?

A. Yes.

X 224. And the difference of 10 degrees is a small difference on that scale of platting, isn't it?

A. Yes.

X 225. Now the aggregate difference there between those two points whether you made the 10 degrees of turn or not, would be very little, wouldn't it?

A. Be a small difference at the end of the mile.

X 226. Now the next one I think you thought there was a difference between them was at the 11th mile, where you said that the map showed a turn that was slight and the notes called for a 65 degree turn?

A. Yes, that is what I have in my notes here.

X 227. Do you know whether or not Mr. Burns in his testimony heretofore given has called attention to that turn?

A. He did call attention to something about that place I am sure and I think probably that is the same place and my notes contained three points that he had mentioned as I remember it.

X 228. Now going to the fourth one you mentioned, that is at the 12th mile as I understand it. You said, if I have it correctly, that the map showed a turn in the line, the notes of Davenport none?

A. That is correct.

X 229. Are you perfectly sure that a careful examination of the map will show a turn in the line. Examine that, please sir?

A. I think so.

X 230. Very slight, if any?

2297 A. It doesn't show much turn.

X 231. Could you be absolutely positive that there was a turn there?

A. I wouldn't think there is any question about it.

X 232. You think there is a turn there?

A. I said I didn't think there was any question about there being a turn.

X 233. People might differ on that subject some?

A. Why, yes, they might differ in it.

X 234. Now I notice you spoke of between the 19th and 20th mile of where the notes called for a South course some degrees West I think, or was it Southwest—no the map showed a South some degrees West and the notes I think you said were Northwest?

A. I think I said the 1821 map shows course running Southwest, the Davenport notes show course running North 70 West.

X 235. That place is in the neighborhood of where Mr. Burns spoke of one that he thought incorrect in his testimony, wasn't it, where he thought it ought to be a change from the notes and changed to read South instead of North?

A. I am not sure about that point Mr. Burns did mention, but I feel pretty sure that I never saw anything mentioned of anything wrong except at one place North of the river.

X 236. Now take the 22nd mile, you said I believe that the notes read South 25 East and the map showed South 30 West. Was that correct?

A. About South 30 West I said.

X 237. You find that?

A. Yes.

X 238. Now see if that is correct about the map—in the first place the map certainly shows a South 30 West, does it, or about that?

A. About that, it shows it running Southwest.

X 239. Now please see what the Davenport notes show about that at that place?

A. I find in this book of notes that it calls for South 25 West.

X 240. Then you are mistaken in saying that it was South 25 East?

2298 A. I think that difference appeared in the copy of the notes I had.

X 241. You think the original copy of the Davenport notes show an error in your copy?

A. Yes. Any way the notes show a discrepancy on this map.

X 242. Take the next one, which was between the 23rd and 24th mile. You stated that the map showed 3 courses, and the notes 4.

A. Yes.

X 243. Didn't you find two of these note calls running the same direction one immediately following the other in order?

A. Yes, the old book of notes show- it South 80 West 40 poles and the same course repeated.

X 244. There wouldn't be a discrepancy there between notes and map?

A. No.

X 245. Now between miles 24th and 25th you thought the map showed 3 courses and the notes 4, I think?

A. Yes, I have it so noted.

X 246. And you also thought it showed a surplusage of 60 poles in distance?

A. In this book of notes it calls for South 20 West 80 poles; South 60 West 180 poles. The first was written North 65 West and is scratched out and due South below it 60 poles Spruce Pine, 25th mile. At the top of the next page is North 65 West 60 poles Spruce pine, 25th mile.

X 247. That is a repetition of the words that occurred first on the preceding page at the bottom, is it not?

A. Yes.

X 248. And you notice that at the top of the next page immediately after the first words you read a great many erasures or cancellations?

A. Yes.

X 249. Isn't it apparent there from those notes that there was an intention to leave out that when you take into consideration what he said just after the cancellations end?

A. I don't know that it is. The call on the top of the next page "North 65 West 60 Spruce Pine 25 mile" is placed above a line. The lines marking out the calls I notice extend presumably from those horizontal lines both ways and it may have been intended to cancel that call at the top of the page.

2299 X 250. Don't you notice that subsequent to that there comes some calls and then marks the 26th mile, whereas by leaving it in you have got two 25 miles in conjunction?

A. I don't think I understand your question.

X 251. The question is this—the end of the call on the page that precedes the cancellations calls for the 25th mile, doesn't it?

A. Yes.

X 252. Now if you leave in the first thing on the next page it goes some distance of 60 poles only and then calls for another 25th mile?

A. Yes.

X 253. That would assume to show that there was something intentionally wrong about that?

A. That is an indication that there is something wrong about that.

X 254. If you would treat it is cancelled matter, it would read Spruce Pine 25th mile, and after that it would read near an old Indian Camp, etc., which is at the head of Big Creek of Tennessee and if there ever is a wagon road through the Big Smokies Mountain it must go through this gap. If there is a wagon road it must go through this gap, then South 20 West 160 poles; South 70 West 160 poles, Spruce Pine and Birch, 26th mile. Now then after that call they added enough to make another mile and call it 26th mile?

A. Yes.

X 255. And in order to make that read intelligently you must omit that call at the top of the page "Spruce Pine 25th mile," which is a repetition of what was written on the preceding page at the bottom and which had been partly cancelled?

A. Yes.

X 256. And as a surveyor in the woods with notes of that sort and in that condition, how would you treat that line, as intending to repeat the 25th mile, or intending to leave the second place out where it calls for it, or the fact that it is called for as the 25th mile?

A. If I had the book of notes at the time I would have considered it as cancelled, although it is not; but the copy of the field notes that I had had all those 4 calls in it when I made those notes.

X 257. And you labored under that disadvantage all the while?

2300 A. Both in the survey and in making these notes and in making plats.

X 258. I believe you spoke at the end of the 34th mile of the map making a turn to the left, and the notes to the right—you think you see on the original plat a turn there?

A. Yes, I think that shows a turn.

X 259. Very slight, isn't it, if any?

A. Yes, it is a slight turn.

X 260. Would it make any difference in the result— perceptible difference?

A. Well it would make a perceptible difference, but it would be a small difference.

X 261. Only a question of 10 degrees there any how, isn't it, as the notes call for and the plat—take the two calls, of 10 degrees, taking your impression on it?

A. Well the notes show a turn of 10 degrees and on the map the line appears to make a turn of about 10 degrees the other way.

X 262. At 39 miles I notice you say the map turns to the left, and the notes do not make any change?

A. Yes, that is right.

X 263. Now does the map make a turn there?

A. Yes, that is another slight turn.

X 264. Any material difference you think?

A. No, I think that is about the least difference shown.

X 265. Suppose you try the 40th mile where as I understand you you thought the map made a straight line and the notes turned 10 degrees, and see what you think by a careful examination of the map now whether it turns there or not?

A. Yes, I think it does.

X 266. Then you are rather mistaken before in thinking it did not make a turn, aren't you?

A. Well I mean to say that I think it does make a slight turn there.

X 267. Many of these turns, as I understood you before, is very slight?

A. The paper is very wrinkled. It appears at first there is no turn in the line but it may be because the paper is pucked up at that place.

2301 X 268. You spoke of something between the 41st and 42nd mile points that you said something about a circle being moved up, whereas the notes showed a 55 degrees—I am not able to say quite what you said because I did not understand. I wish you would explain.

A. There is one course marked off there that doesn't at first show. They apparently failed to make the circle or dot either at that point, but it shows a prick in the paper and shows where it was measured at.

X 269. And it was that that you referred to by the circle being moved up, or not moved up—I did not catch the meaning of the phrase you employed.

A. Yes, that is what I meant.

X 270. What was the objection—I am not sure that I catch the purport yet?

A. Well there is a course South 60 West 160 poles to a Beech, 42nd mile; the next call or the next course in the next mile is North 65 West 100 poles would make an angle of 55 degrees, and there isn't such an angle shown on the map anywhere about the 42nd mile circle.

X 271. And that would indicate that they started to put something on the map what they wanted to do at first, or that they omitted something after starting to do something?

A. There is an indication of that.

X 272. Now you spoke of something as to the 42nd mile. What was the objection there, please?

A. Map shows slight turn to right, the notes call for a 70 degrees turn.

X 273. Well that is a part of the same thing you were calling attention to a while ago, in effect?

A. Yes, it both results from the same thing, I think.

X 274. I wish you would see if that calculation of 70 degrees there, is correct in looking at the notes?

A. Well I think I said in testifying that 55 degrees as given in this book, and I gave it as 55 degrees in the other, and if I said 70 degrees I guess I made a mistake, because it should be the same for both.

X 275. The map really shows a turn there of something like 35 degrees, don't it?

A. I don't think it is that much. Looks more like 25 de-
2302 grees than 35, and I can't measure angles on this old map because I can't make any pencil marks on it.

X 276. Well now let's see—at the end of the 44th mile there I

wish you would see what that old map does—whether it goes straight through or whether it makes a turn?

A. As near as I can make it out it is a straight line.

X 277. Now between the 15th and 16th mile points and at the 16th mile you found some errors, you thought as I understood it, or discrepancies rather, between notes and map. I wish you would examine and see if the real discrepancy, if there be one in the first, wouldn't explain both?

A. From the 15th mile circle to the 16th the map appears to show the line about South 56 West while the notes call for South 80 West, then at the 16th mile the notes call for an angle of 45 degrees. The last course in the 16th mile is South 80 West 280 poles, the first course in the next mile is North 55 West 60 poles. Instead of making an angle of about 45 degrees the map seems to show an angle of about 75 degrees. That is, the notes I have made here.

X 278. Would that matter be explained by the fact that as you say there should have been a line between 15 and 16 according to the map the map should have been about 58 when the note calls for 80. That would make a difference of about 22 degrees, wouldn't it?

A. Yes, if that first line was corrected, was correct it may be that the second one was correct.

X 279. The one might account for the other?

A. I think so.

X 280. And thus make it really one discrepancy?

A. Yes.

X 281. That path at the 53rd or 54th mile, whatever it may be. The map seems to show it at 53 and the notes call for 54—it really passes a little path, doesn't it?

A. It doesn't cross exactly at the mile circle.

X 282. And it is really between the 53rd and 54th mile points that it goes isn't it?

A. Yes.

2303 X 283. You pointed out a discrepancy there between the 59th and 60th mile points between the map which seems to make a turn to the right and the notes which calls for a turn of 20 degrees to the left. Now is there really any considerable difference there when you consider the scale of the map, etc."

A. No, it isn't a very big difference because it is not a very long course.

X 284. In the 60th mile you pointed out, I think, a difference between the map and the notes, and I ask you if you look at the two together the one you pointed out before where you said there is no great difference, and if you put them together if the one is not corrective of the other.

A. Yes, it seems that the two errors would tend to balance each other of discrepancies.

X 285. Now between the 60th and 61st mile you noted a discrepancy that you said the notes only called for 3 courses while the map calls for 4. That slight discrepancy does appear, does it, but it seems to be a correct criticism?

A. Yes

X 286. Now going to the next one, between the 61st and 62nd. You see, please sir, whether or not the map does not make a slight turn there?

A. If it makes a turn I can't detect it.

X 287. Well let's try then the 66th mile, between 66th and 67th. I was about to skip one—your objection was that while the map showed 5 courses the notes showed only 4, was it?

A. Yes.

X 288. I wish you would look at those circles on the map there and see whether there isn't a perceptible error in putting in the circles and whether or not the first space is not too big and the second space too little between those circles?

A. Yes, it appears that the mile circle is located at the wrong place by the notes. It would appear from the notes that the mile circle is located wrong on the map. I think I mentioned in my testimony that it was either an error in the number of courses or the
2304 placing of the mile circle.

X 289. The objection I believe that you had at the 67th mile was that the map called for no path while the notes called for the Cheogee path?

A. Yes.

X 290. Well is that really a conflict at all?

A. No, it isn't any conflict any more than they appeared to put on the map the other paths that were crossed on the line.

X 291. You couldn't be sure that they put down all could you?

A. So far as I know the line they put down all other paths.

X 292. That you are aware of?

A. Yes.

X 293. Now at the 69th you say that there is no stream called for by the map I mean, while the notes call for one and so at the 70th mile that is where you was talking about up Slick Rock Creek about the distance, how far you should go, isn't it?

A. Yes.

X 294. And we have been into that in the testimony before. I wish you would look to the objection you made as between the 70th and 71st mile as to the discrepancy where I think you showed the map showed 3 courses, and the notes 4, and see if as a matter of fact there are not 2 lines called for in the notes of the same course and called for consecutively so they might necessarily have been platted together and not have shown a change unless by a dot or something of that sort?

A. The calls I find in the book of field notes is South 10, South 10, West 60, due West 60, South 30, West 200, Pine 71st mile, making four courses in the notes, and a total distance of 360 poles.

X 295. Some of those are very nearly the same course of the notes, are they not?

A. Not much difference South and South 10 West, difference only of 10 degrees.

X 296. Now I believe the point you called attention to between the 71st and 72nd line was the one Mr. Burns mentioned where the last course on the map seems to be Southwest?

2305 A. That is between 71 and 72?

X 297. Yes.

A. Yes.

X 298. Now go between the 74th and 75th miles and see if the map doesn't show a small turn there?

A. It does show a small turn. I think I must have made that error by working on the tracing instead of on the original map—the original copy.

X 299. Now at the 76th mile the change if any on the map that you mentioned there is very small, isn't it?

A. No, it is a greater change than in the preceding mile.

X 300. About how many degrees do you think it was there?

A. Looks to be 20 degrees.

X 301. At the 89th mile—passing over some of those slighter changes—I believe you say that there is no call on the map for Beaver Dam Bald?

A. Beaver Dam Creek.

X 302. The notes call for what?

A. Hickory 89th mile at the head of Beaver Dam Creek.

X 303. Where is that end of that line, the 89th mile, how far is it from that Holly tree? The tree that is marked 86-M.?

A Well I never found the tree for that 89th mile; the head of Beaver Dam Creek is to the East of Jenks Knob.

X 304. How far is it from the Holly marked 86 or 86-M. that we have been talking about?

A. From the head of Beaver Dam Creek?

X 305. Yes.

A. I should say a mile and a half.

X 306. Are you at the head of the mountain at the top of the mountain at that point?

A. Top of the mountain East of Jenks Knob.

X 307. I wish you would examine very carefully your notes, if you have them, and see if you are correct about that distance from the Holly to the head of Beaver Dam Creek?

2306 A. I couldn't give it except by the Jenks Ridge and by the way of the ridge over by the Holly over to Jenks Knob around to Jenks Gap.

X 308. How far is it now along up Jenks Ridge and by Jenks Knob, etc.?

A. I will have to calculate the distance.

X 309. Give us as nearly an accurate statement of that as you can, please sir.

A. It is approximately a mile and a third by way of Jenks Gap and the mountain top.

X 310. How far from Beaver Dam Creek to the Beaver Dam Bald top taking the Beaver Dam Creek you spoke of as Beaver Dam Creek?

A. From the Jenks Gap to what I call the head of Beaver Dam Creek by the mountain top by way of Jenks Knob it is about 2½ miles to Beaver Dam Bald.

X 311. Now look please sir at the discrepancy you mentioned between the 90th and 91st mile, and see whether you think that map there makes a turn or not—the map of 1821?

A. I find that the line as drawn on the map is a straight line, but I now find on a very close examination that to the West and to one side of that line is a place pricked in the paper, which may have been located by bearing and distance and afterwards the line drawn between the two mile lines as a straight line when it should have been drawn to that place pricked in the paper.

X 312. What about the line on the old map of 1821 at the 94th mile—how do you find that—is the map straight there or not?

A. I consider it a straight line as inked or practically so, but on an examination I find the paper pricked there and there does seem to be a turn in the line at that point showing a slight turn in the line.

X 313. I notice Mr. Williams a call here in these notes for the Cheoge path. Do you infer from that that the surveyors and commissioners on that survey had any regard to the Cheoah river?

A. I consider that some indication that they knew of the river or stream of the same name, but having the name different from the name of the river and from what I know it, and "Cheogee" instead of "Cheoah."

2307 X 314. Let me call your attention to the fact that it may be a "v" instead of a "g" where you call it "Cheogee?"

A. I have had that on my copy of the notes as "Cheoger" all the time. It shows it "Cheovee."

X 315. And that would be about the proper way a Cherokee Indian would put it if he wanted to call it—"Cheoyee?"

A. Yes, I think it probable.

X 316. Mr. Williams, in these tracings or this tracing of Mr. Burns on the map of 1821 that you spoke of—I wish you would state please whether or not that outline is correct, the general outline of that map?

A. Why it is approximately correct.

X 317. You thought there was some little discrepancies?

A. Yes, there are some.

X 318. But they are small, are they not?

A. Yes.

Mr. SOMERVELL. There was one map, I think here, I wanted to call your attention to, somebody's map, I don't remember his name.

Mr. SOMERVELL. The complainant by enquiring in regard to certain matters in relation to Exhibit "DD," does so without waiving its objection to the competency of that paper in evidence and reserves those objections.

X 319. I wish you would please look at the Exhibit "DD," Mr. Williams, and tell me what point my pencil is over now opposite the left hand prong of what is marked Valley River at its extreme height and where there are hachures that seem to indicate the junction of two ridges?

A. Well I really don't know; it is shown as the divide between Cheoah Creek and Valley River.

X 320. You know what mountain actually does constitute that divide and what its point is where it joins the ridge where the State Line is there?

A. I know very little about it. I know in a general way something about that divide, it has been pointed out to me as
2308 running off from the Tellico divide at Beaver Dam Bald, at McDaniel Bald I should say, but I never traced it out to know personally.

X 321. I would like to ask you in relation to that plat. I will ask you to examine the State Line as laid down where it crosses the Hiwassee river, and see if it runs a portion of the way through the river there?

A. It does appear on the map that the line runs with the river for a distance of probably a mile.

Redirect examination by Gen. CYRES on behalf of the defendant, State of Tennessee:

R. D. 318. Now Mr. Williams, you were asked a few minutes ago by Mr. Soudley whether the Burns tracing of the map of 1821 as it appears upon your Exhibit "CC" is a correct copy of that map. As I remember your answer, you said something about it being approximately correct and you were then asked whether the differences were immaterial. I will ask you to state whether, in your opinion, the absolute change in the courses on this tracing, as you have heretofore explained as immaterial, do you regard the change of the courses from the map of 1821 as they appear on this tracing as immaterial?

A. No, on the other hand I consider them material and misleading. What I meant to say that the general appearance without close inspection appeared to be much the same as the original map.

R. D. 319. Now Mr. Williams you were asked considerable about the call to Cheogee Path at the end of the 67th mile. I will ask you to state whether, in your opinion, if the draftsman of this map of 1821 had been preparing the map of 1821 from these notes that path would have been indicated on the map?

A. Why I thought so inasmuch as they located the other paths.

X 320. You were asked upon cross examination about how far the Holly tree, alleged to bear on it the letters or parts of letters in-
dicating 86-M, is from the head of Beaver Dam Creek, and
2309 I believe you in your answer gave the distance by measuring from the alleged Holly Southwesterly along Jenks Ridge to Jenks Knob and then Northeasterly from Jenks Knob to the head of Beaver Dam Creek, did you?

A. Yes, that was the only way I could give the distance by measurement.

X 321. State whether or not standing on Jenks Knob you can easily see the head of Beaver Dam Creek to the East of said Knob?

A. I am not sure about standing exactly on top of Jenks Knob, but in practically all that vicinity there Beaver Dam Creek and the valley can be seen from the top of the mountain.

R. D. 322. And its head?

A. Yes.

R. D. 333. Now I will ask you to indicate on this map, Exhibit "BB" to your deposition about where the head of Beaver Dam

Creek is? Mark it with a line to show its approximate location and so designate it. If you can do it accurately from your notes, do that?

A. I can't do it accurately.

R. D. 334. Then do it approximately?

A. I have located approximately on Exhibit "BB" the head of Beaver Dam Creek and marked it on said exhibit "Head of Beaver Dam Cr."

R. D. 335. That book exhibited with the deposition of W. D. Jones—about the courses and distances between the 24th and 25th mile about which you were cross-examined and which you noted in your original examination as the eighth error discovered by you in the comparison of the 1821 map with the Davenport field notes. Now I will ask you to state if the first call in that mile isn't "South 20, West 80 poles"?

A. That is correct.

R. D. 336. The second call "South 60, West 180 poles"? Is that correct?

A. That is correct.

R. D. 337. Then as it was first written into the book the next call is "North 65, West 60 poles, Spruce Pine 25 miles." That is correct, isn't it?

A. Yes.

2340 R. D. 338. Then "North 64 West" was stricken out?

A. Yes.

R. D. 339. And immediately under that error is written "due South"?

A. Yes, that is correct.

R. D. 340. Now then at the bottom of that page there is no more room for another course and distance, is there?

A. No.

R. D. 341. Then at the top of the next page appears "North 65, West 60 poles, Spruce Pine 25 miles"?

A. Yes, that is correct.

R. D. 342. Isn't it a fact that the erasures below that do not effect in any way the call "North 65 West, 60 poles"?

A. There is a horizontal line drawn between the top of the page and the next calls below which has been cancelled.

R. D. 343. Now is it not a fair assumption, Mr. Williams, that the "North 65, West 60 poles," "Spruce pine 25 miles" written in at the bottom of the page was written in by mistake before including the call "due South 60 poles," and upon the discovery of that error the "North 65" was stricken out and "due South" written under without striking out "Spruce Pine 25 miles" at the bottom of the page, then the true last call as shown by the notes was written in at the top of the page?

A. That seems to be a very reasonable explanation for the shape the notes are in.

R. D. 344. Now you were examined or rather asked on cross-examination in regard to the distance between the 59th mile tree or the point at which the 58th mile tree and the State Line is supposed to end and where Gannett commenced his survey to the river along

the mountain top as surveyed by Gannett and Burns, and if that map don't show that the end of the 64th mile was about 275 feet North of where you had located it on your direct examination on your Exhibit "AA"?

A. Yes.

R. D. 345. Now you got that difference of 275 feet from calculating along this map or from an explanation on it furnished
2311 you by Mr. Burns, didn't you?

A. Yes, I first calculated the distances from the field notes given in evidence and when making the calculation on cross examination I took the distances as given on the map.

R. D. 346. In your original examination you made the calculation from the field notes as set out in the deposition of Mr. Burns, and discovered that the end of the 64th mile was 1820 feet from the river?

A. I think that is the distance, yes.

R. D. 347. But from the map it appears to be 275 feet further than 1820 feet?

A. Yes, or 2095 feet.

R. D. 348. Now I will ask you if you did not make an accurate calculation of the distances shown by Gannett's field notes of his running from the 59th mile tree to the Turnpike and you didn't find that the aggregate of this distance was 12,580 feet?

A. I think that is correct, and Mr. Hale and I together calculated it and checked with each other in each instance.

R. D. 349. Now I turn right to pages 16 and 17 of the copy of Mr. Burns' deposition taken at Asheville on May 1st, and ask you if he didn't set out there the courses and distances of his running from the Turnpike to the Fore and Aft Spruce Pine on the North bank of the river?

A. Yes.

R. D. 350. Now I will ask you to state if you didn't add up the aggregate of those distances as shown by Burns' field notes of his own running from the Turnpike to that marked fore and aft Spruce Pine and that aggregate is shown to be 15,640 feet?

A. Yes.

R. D. 351. Was that checked by both you and Hale?

A. Yes.

R. D. 352. Now what is the sum total of the distances shown in Gannett's notes and the distances shown in Mr. Burns' notes from the 59th mile tree to that marked fore and aft tree?

A. 27,220 feet.

R. D. 353. Isn't that just 1820 feet over 5 miles?
2312 A. Yes.

R. D. 354. Then those distances do indicate that the end of the fifth mile or the 64th mile is 1,820 feet North of that marked fore and aft Spruce Pine?

A. Yes, they do.

R. D. 355. Now you were asked about the distance from the mouth of Cheoah river to the point where the ridge or mountain

marked as the main ridge and State Line reaches the Tennessee river as shown on this Deaver map of 1837, Exhibit "FF" to your deposition, and you stated it, as I remember it about $3\frac{3}{4}$ miles as shown by the scale of that map?

A. I think it was 3.44.

R. D. 356. Approximately $3\frac{1}{2}$ miles?

A. Yes.

R. D. 357. I believe you stated in response to Mr. Sondley that you regarded this map as a mere sketch and not showing distances accurately?

A. I don't consider it as a mere sketch, but I consider that a considerable portion of it is sketch work, and there are some things that I don't think were put in by sketch alone.

R. D. 358. The Tennessee river as laid down on this Exhibit "FF" and the Cheoah river is not exactly as those streams run from your knowledge?

A. There is no ridge, so far as I know, that exactly fits with the ridge shown on that map. In fact there is no ridge in that country exactly straight as that ridge and that distance as shown from the river.

R. D. 359. Those streams—do you think they are accurately laid down from your knowledge of those streams?

A. I know they are not.

R. D. 360. Now I believe you said the scale of this geological topographical map, marked "Nantahala Quadrangle" is a mile for a half inch?

A. Approximately so at least.

R. D. 361. Now assuming that its $3\frac{1}{2}$ miles from the mouth of Cheoah Creek or river to that ridge which reaches the river on the State Line, as shown by the Deaver map of 1837, please indicate the point on this topographical map, Exhibit "GG" to your depo-
2313 sition where $3\frac{1}{2}$ miles would end, according to the scale of that map? Mark that point in red ink, please?

A. I mark the place as requested with a cross with red ink in the bend of the river and just after the words "Monroe Co."

R. D. 362. You mean you have made that mark and designation on this Exhibit "GG" to your deposition?

A. Yes.

R. D. 363. That point that you have thus marked and designated is close to the foot of a ridge reaching or rather leading down to the Tennessee river, something like two miles below the mouth of Slick Rock Creek, as it is shown on this topographical map, your Exhibit "GG," is it not?

A. Yes.

R. D. 364. Now then take that blue pencil and mark a line from the foot of that ridge around it as it runs to its connection with Big Fodder Stack and from Big Fodder Stack to Junction?

A. I have done so as requested.

R. D. 365. Does that line run the point you have indicated on the river around by way of Little Fodder Stack and Big Fodder Stack to

Junction look anything like this Deaver map of 1837, your Exhibit "FF"?

A. Well it has some resemblance, except as to scale or distances, but it doesn't compare in distance.

R. D. 366. Well—it has this resemblance only, hasn't it—that at the end of the first turn there is a bend to the left?

A. Yes.

R. D. 367. But at the end of the second turn the bend, instead of being to the right as it appears on the Deaver map, is still more to the left?

A. Yes, that is a wide difference. The first turn has some resemblance except as to distance.

R. D. 368. Did I understand you to say during your cross-examination, Mr. Williams, that about the only thing this Deaver map of 1837 showed certainly was that the State Line reached the river on a ridge?

A. I don't remember what I said along that line, if anything.

R. D. 369. Well, it does show that, doesn't it?

2314 A. It does show that the State Line goes to the river on a ridge.

R. D. 370. You were asked, Mr. Williams, on your cross-examination about the trees at the end of the 69th and 70th mile calls in the Davenport notes being on a bank of a creek. Is there anything on this map that indicates that those trees are anywhere near a creek?

A. No, there is not.

R. D. 371. Is there anything on this map that indicates that those trees are any nearer a stream of water than your actual running of those notes was?

A. Nothing to indicate that they was near as I was in running the notes.

R. D. 372. I will ask you to state whether or not if the map had been made from those calls the Maple at the end of the supposed 69th mile and the Birch or other tree at the end of the 70th mile and on the West bank of the creek if the name of the creek should not have been noted?

A. I can't understand why the creek should not have been shown either if the map was made from the field notes.

R. D. 373. Now you were asked by Mr. Sondley about the relative inconvenience or discomfortures in surveying on a mountain and in low land. I will ask you to state whether or not it is easier or more difficult to run up and along the Hangover Ridge and Lead than up along Slick Rock Creek?

A. It is very much easier to go up the Hangover Ridge or any other ridge in that part of the country than it is along Slick Rock Creek.

R. D. 374. Do you know of any more difficult country to survey or traverse than that gorge up Slick Rock Creek?

A. I think I do know one place, that is on Citico Creek in what is known as Jeffries Hell.

R. D. 375. Only one place in all your experience?

A. Yes.

R. D. 376. Now you were asked something about a survey actually made from these notes. Do you know anything about any survey actually made from these notes except your own?

A. No, I do not.

2315 R. D. 377. Do you know whether any actual survey was ever made from these notes contained in this little book exhibited with the deposition of W. D. Jones?

A. No, I do not.

R. D. 378. Is there anything about that book that would indicate that it was made—that the notes therein set forth were made at the time of the survey and in the field?

A. No, there is no indication that the book was used in a field when a survey was made, because I have never known of a surveyor to use a pen *an* and ink in making notes in the field, and I don't think anybody ever does it at any time.

R. D. 379. Now I will call your attention to this original map of 1821 which purports to bear the genuine signature of William Davenport. You have looked through this book repeatedly during your cross examination by Mr. Sondley, and I will ask you to state whether you found anything in this book that would, in your opinion, indicate that it was put into the book by the same man who signed "William Davenport" to this map of 1821?

Gen. BICKETT: We object there on the ground that the witness is not an expert in handwriting.

Gen. CATES: We-, I believe I will not attempt to qualify Mr. Williams as an expert. I do not know whether he could qualify or not. State of Tennessee withdraws the question upon the objection.

R. D. 380. Now I will ask you to state, Mr. Williams, whether, in your opinion, this map of 1821, here before you and bearing or purporting to bear the signatures of the six Commissioners and the two Surveyors—Robert Armstrong and Wm. Davenport,—was made from the field notes contained in this little book, exhibit to the deposition of W. D. Jones?

Gen. BICKETT: We object to that.

A. I can't think that it was made from the copy of notes contained in that little book.

2316 R. D. 381. Can you explain how a man would sign this map of 1821 showing a line continuously on a mountain, in view of the calls in this field note book if the map had been made from those field notes?

Gen. BICKETT: State of North Carolina objects on the ground that it is an expression of opinion purely.

A. No, I don't think any one having surveyed a line with such notes as are contained in that book would sign a map showing an entirely different thing at different places. I know very well I wouldn't do it.

R. D. 382. You were asked by Mr. Sondley about the call in this book of field notes leading up to the 101st note, which call is "South

40 West 320 poles to a Hickory and Rock at the wagon road the 101st mile at the end of the Unicoy Mountain," and I think he asked you if the end of the mountain was on a mountain? Is the end of a mountain on a mountain?

A. No, it seems that it shouldn't be, but it is on top of the mountain and the mountain continues for several miles from that place on to McFarland; it continues on for six miles pass that point.

R. D. 383. Then it is not at the end of the mountain?

A. No.

R. D. 384. I here call to your attention the question put to you on cross examination as to whether or not you plotted the Davenport field notes—and I assume that the question also referred to the running of the lines as you said you did run them from the 59th mile tree to the 72nd and from the 101st back to the Tennessee river—on your own conception, or as you was directed to do by the State of Tennessee. Let me ask you to state Mr. Williams whether you were given any direction by any one connected with the State of Tennessee, or any one else, as to how you should do that work?

A. I was directed by the Attorney General of the State of Tennessee to make a survey from the Davenport notes, beginning at the 59th mile tree, but there was no instructions of any kind about how the work should be done. I was simply directed to make the survey, and given the Davenport notes or a copy of them, and told to make the survey.

R. D. 385. To make the survey from the end of each line, as you did?

2317 A. Yes, first from the 59th mile tree and then when I had to come here to Knoxville to attend the United States Court I was told to go to the 101st mile tree and make a survey Northeasterly from that, and again I received no instructions about how it should be done.

R. D. 386. State whether or not your work in making that survey was your interpretation of the meaning of those notes, or that you did the work as directed by any one, or laid down the line as directed by any one?

A. I had no directions or instructions from any one as to how it should be done.

R. D. 387. State whether or not your work in making those surveys and your work in laying down the result of the surveys so far as the surveys were made and in plotting the other parts of the line, was your own interpretation of those notes?

A. It was.

R. D. 388. Now you were asked a good deal on cross examination about trees at the end of the calls—principally I think the questions were directed to your running Westerly from the 59th mile tree. I will ask you to state whether in running Northeasterly from the Unaka Turnpike, as you did run those notes, you found any marked trees at the end of the miles, or at the end of the line that you run?

A. No sir, I did not, and I have been convinced having been over so much of the mountain around and having hunted so much for

those trees that it was only on rare occasions that a mile tree was marked.

R. D. 389. You were asked about the finding of marked trees on the North side of the river bearing marks of 1821 indicated to you. Let me ask you how many trees North of the river you did find bearing marks made in 1821?

A. I think about five trees that I found that I believed to be the original marks, and only two that I was satisfied was the original marks. The one on the North bank of the river, the Hemlock tree, which had been blocked and which I counted until I was satisfied it must have been the original marks, and in a gap some two miles Northeast from there I cut the original marks out of a Black Oak tree.

R. D. 390. Near what point was that last tree referred to?

2318 A. Near Locust Gap.

R. D. 391. Now you were asked on cross examination about a path or gap at the end of the first mile which you run from your beginning point, the 59th mile tree, so-called, and I believe you stated that at the end of the second call of those notes, being the end of the 59th mile, it was near a path down on the mountain side?

A. Yes.

R. D. 392. There is a gap in the mountain through which that path runs?

A. Yes.

R. D. 393. What is that path called?

A. Dalton Gap.

R. D. 394. How long have you known it as "Dalton Gap"?

A. Not very long, but since I first went into that part of the country.

R. D. 395. That 59th mile tree, or tree up there on the mountain, and from which you say you began the line, and which Gannett says was the 59th mile tree, has it got an "M" on it?

A. Got both the "59" and an "M."

R. D. 396. And you called it a Scarlett Oak?

A. Yes.

R. D. 397. Is there a difference between a Red Oak and a Scarlett Oak?

A. Yes, marked difference in the bark and the leaves and the quality of the wood.

R. D. 398. Now Mr. Williams you were asked how you could testify that you correctly plotted those notes by ignoring trees. At the end of the first mile did you find any tree?

A. No.

R. D. 399. Then you say you took an off-set to the top of the mountain top?

A. I did on the second running of the line, running from the 59th mile tree and then moved up to the gap.

R. D. 400. Did you move up to the gap and then run the courses of the second call, I mean the courses of the second mile?

A. Yes.

R. D. 401. Did they fit the top of the mountain?

2319 A. No.

R. D. 402. Was there anything that indicated the top of the mountain as indicated by the red line on Exhibit "BB"?

A. Some of them would be nearer and when we got to the 60th mile why we got further away from the mountain.

R. D. 403. Even when you took an off-set at the end of every course?

A. Yes.

R. D. 404. Now you were asked why you didn't run a line from the mouth of Slick Rock Creek according to the Davenport field notes. Let me ask you whether you did run such a line?

A. I did run the first course given in the notes from the mouth of the creek South 80 poles and the line left the creek at the end of the distance given. I sighted the second line and it was still going further away from the creek.

R. D. 405. Would the end of the calls in the 65th mile put you back on the creek at all?

A. I really don't know whether it would or not, but I think it would.

R. D. 406. The end of the calls in that 65th mile seems to be a due West line. So if that due West line got back to the creek it would have to come from across the creek, wouldn't it—it would have to come from a point 60 poles East of the creek, wouldn't it?

A. Not necessarily, because there are some places going up the creek where the direction is nearly West itself.

R. D. 407. Examine this map of 1821 and state if the 66th mile circle isn't right up next to the creek?

A. It is.

R. D. 408. Now I will ask you if it is not a fact that if the last call in the 66th mile circle was due West 60 poles if that line—if the beginning of that line wouldn't be due East from that mile circle 60 poles?

A. Yes.

R. D. 409. And wouldn't that put it 60 poles across and East of the creek?

A. It would provided that mile circle is on the creek. The creek is sketched in wide enough for the Tennessee river.

2320 R. D. 410. And fully wide enough for Cheoah river too, isn't it?

A. Yes, and too wide too, but it is difficult to say where the mile circle or the other point would be located, but granting that that mile circle is on the West bank of the creek the beginning of the preceding line which runs due West would be very much to the East of the creek.

R. D. 411. Now as shown on this map this last call leading up to the 66th mile circle is due South, isn't it?

A. Yes, it appears to be about due South.

R. D. 412. Now Mr. Williams, you were asked by Mr. Sondley about distorting these Davenport field notes. I will ask you to state whether you intended in the running of the line by those

notes, as you did, to do anything more than to give your careful honest running of the line as shown by the field notes?

A. No.

Counsel for North Carolina, F. A. Sondley, states that he had no idea in putting the question to intimate that the witness was acting improperly in making the survey according to his idea of what he was doing.

R. D. 413. I will ask you to state Mr. Williams whether in the running of the Davenport field notes when you didn't find marked trees at the end of them which indicated to you that they bore State Line marks or other marks that they were on the State Line, you could do anything else but run the courses and distances in the notes?

A. I think the only thing I could do was to run them continuously as given in the calls, or else off-set back to the mountain and to the known State Line at every course.

R. D. 414. Did that help the situation?

A. It didn't.

Recross-examination by Mr. SONDLEY on behalf of the complainant, State of North Carolina:

2321 R. X 322. You state that you thought that the man who made that survey if he passed the Cheogee path would have called for it on the map—necessarily the map passes the Cheogee path, doesn't it, that map of 1821?

A. Yes, it would have to pass it.

R. X 323. And it don't call for it?

A. No.

R. X 324. Now about that Beaver Dam Creek, please sir. Isn't it a fact that Beaver Dam Creek has a number of prongs that run out from the mountain in which it heads—some very much to the West of the one you have talked of?

A. Yes, there are a number of streams, I take it running in from both sides of that main valley.

R. X 325. I wish you would use this exhibit which I borrowed without asking anybody's leave and which I will return. I wish you would look at the head of Beaver Dam Creek as shown on the defendant's exhibit "66" you have spoken of and see how they are—at what space there—could you point out Beaver Dam Creek along the head of that mountain?

A. Well for a number of miles along the mountain there are streams flowing into Beaver Dam Creek, but there is a valley running right there that is pretty near straight and has a general direction, and the valley of that creek extends up very near to Jenks Gap, and I made enquiries about it. That is considered the head of the creek and appears to be by the valley and known as the head of the creek.

R. X 326. But you don't know how it was considered 80 years ago?

A. No.

R. X 327. Which one of them was it you were talking of when you testified to as the head of Beaver Dam Creek?

A. I was talking about the first prong shown to the West of Rocky Knob. The streams are not correctly laid down on this topographical map, but that in a general way shows the prong I was speaking about.

R. X 328. Now for a moment, if you please sir—let us revert to the old field notes we have been talking about, and I will not worry you much—coming to this cancellation matter about the 25th mile—
2322 it was suggested to you that you might have left out all that was on that first page and then use what was on the second page instead if I understood the suggestion. Was that right?

A. No. The suggestion was that when North 65 West had been written near the bottom of the page and it had then been noticed that there was another course coming before that of due South of 60 poles and that the North 65 West was cancelled at that place and then put in its proper place following the due South course.

R. X 329. Then that would have left one call for the Spruce Pine 25th mile and another call for a 25th mile at the end of another additional 60 poles, and that would have been wrong, wouldn't it?

A. Yes, there is evidently something wrong about it, just what, I don't know. All these things are a speculation and conjecture with me, because I don't know.

R. X 330. It does appear that the maker of these notes when he got an error on the first page that he attempted to correct it?

A. Yes.

R. X 331. That would lead you to believe that he intended to leave it as he finished it?

A. Yes, it bears some indication of that.

R. X 332. That might also account for the striking out of the first line on the next page?

A. Yes.

R. X 333. You say, as I understood you, the end of the mountain, wouldn't be on a mountain. Can you get off of it to save your life?

A. In one sense it would be and in another it wouldn't.

R. X 334. You mean it is the extreme point of it?

A. Yes.

R. X 335. Now is it not a fact though that in that country the Unicoy Mountain does end at the 101st mile and that then Frog Mountain begins?

A. It is called Unicoy Mountain to the Hiwassee river and then nearer back towards the 100th mile as it would be the mountain drops off apparently 500 feet to a lower level and goes on all the way
2323 down to the river on a lower elevation than that, and I always thought until recently that that 101st mile was at the end of that drop off. I can see the point for 20 miles in any direction almost and in looking at that mountain from various places I thought the 101st mile ended at that drop off where it drops off for several hundred feet to a lower level on the mountain.

R. X 336. Is it not perfectly clear to your mind that the man who

made the map of 1821 and the man who made the Davenport notes had some sort of information of the same survey?

A. Yes, that is apparent. I want to make my answer say that I believed the man who made the map had some similar information.

R. X 337. The two coincide enough in their calls to base it to some extent upon the same survey?

A. A plat of the Davenport notes on the same scale makes a somewhat similar map, except in detail; that is, a general outline of the two lines—I mean a general outline of the two looks practically alike.

R. X 338. And the courses and distances practically one set?

A. Yes.

R. X 339. And in meandering a mountain or stream for such a distance as that the number of similar calls would necessarily indicate that both were predicated upon the same survey in part, if not all through?

A. Yes, it would indicate in the main part they were of the same, or approximately the same.

Redirect examination by Gen. CATES on behalf of the defendant, State of Tennessee:

R. D. 115. Now do you mean to say Mr. Williams that because the man who made the notes had information of the map indicated that the notes were made before the map was made?

A. I don't know whether I fully comprehend the question or not, but I think I do. I think that by very careful work field notes could be made from the map itself which would make another map which would very closely resemble.

2324 R. D. 116. Do you mean to say, Mr. Williams, that, in your opinion, this map of 1821 was made from the Davenport field notes?

A. No.

R. D. 117. Now you mentioned for the first time in answer to a question from Mr. Sondley on re-cross-examination that the Unicoy Mountain dropped off some little distance Northeast from where you now understand the 101st mile-stone or mile tree is. Is that so?

A. Yes.

R. D. 118. How far back Northeast of that?

A. It is something like a mile, or a little more. I have never measured the distance along the mountain top.

R. D. 119. Now you were asked about the head of Beaver Dam Creek. I will ask you to state if it is where you have sketched it in here on this map, Exhibit "BB"?

A. That is my idea of the head of Beaver Dam Creek, and what is commonly called the head of Beaver Dam Creek.

And further this deponent saith not.

JOHN L. WILLIAMS.

By WM. MEYERHOFF,

Stenographer.

Sworn to before me on September 5th, 1911.

S. E. CLEAGE,
Supreme Court Clerk.

2325 The next witness, W. D. HALE, for the defendant, State of Tennessee, having been duly sworn, deposed and said:

Direct examination by Gen. CATES on behalf of the defendant, State of Tennessee:

D. 1. Mr. Hale, are you the same W. D. Hale, who has already been examined in this case about December —, 1910.

A. Yes.

D. 2. I will ask you to state whether or not when you testified in this case in December, 1910, you had ever heard of the so-called Davenport field notes?

A. No.

September 6, 1911, at 5:30 P. M., the further taking of proof was adjourned to the same place at 8:00 P. M.

September 6, 1911, at 8:00 P. M. the further taking of proof was resumed, pursuant to adjournment.

Present:

For Tennessee — Hon. Charles T. Cates, Jr., Attorney General of Tennessee, and Col. T. E. H. McCroskey.

For North Carolina: Hon. T. W. Bickett, Attorney General of North Carolina, Gen. Theo. F. Davidson, F. A. Soudley, Esq., and Mr. W. R. Hopkins.

W. D. HALE, resuming the stand for further examination, deposed and said:

Direct examination continued by Gen. CATES on behalf of the defendant, State of Tennessee.

2326 D. 3. I will ask you to state Mr. Hale, whether some month or more ago you were furnished a copy of the Davenport field notes, or what purported to be a copy of said field notes by the Attorney General of Tennessee, or some one representing Tennessee, with instructions to accompany Mr. John L. Williams and make a survey of those notes on the ground from the 59th mile tree Westerly and also from the 101st mile tree back?

A. I was furnished a purported copy of said notes and had such instructions as are embodied in your question, to accompany Mr. Williams on a survey to test the notes and see if they would follow the undisputed State Line and the line as claimed by North Carolina, or the line as claimed by Tennessee, or where they would run. was my understanding of the instructions — I don't know that they were in those words.

D. 4. I will ask you to state Mr. Hale whether you were given any particular instructions as to how you should do that work further than that you should run out the field notes on the ground?

A. No we had no specific instructions except to test the field notes in a reasonable manner.

D. 5. Did you accompany Mr. Williams on that survey?

A. Yes.

D. 6. Where did you begin your work?

A. We began at the 59th mile tree and first run a line Northeastwardly nearly North as I recall it now one mile to near the top of Parson's Bald, then returning to the 59th mile tree.

D. 7. Now that first line you run was a mile back of the supposed 59th mile tree?

A. Yes, running back to the proposed location of the 58th mile tree.

D. 8. Did you find any tree where the 58th mile tree would have been supposed to be?

A. No, we run out in a bald spot on the mountain and near the Northeast edge of the bald spot but not on top of the mountain. There were a number of trees within 100 yards where we run out, but none of those trees had any marks on them that we could discover.

2327 D. 9. Did you find any marked trees bearing State Line marks on that mile reversed back from the 59th mile?

A. No.

D. 10. What was the character of the mountain top—were there trees on it?

A. Yes, for three fourths of the way there were trees on the mountain top. On some of them the bark was tight and mossy and might have at one time been marked but fail to show the marks now. Other trees might have had marks on them, I don't remember of seeing any, we were not on the crest of the mountain in running that line but very little. We left the crest of the mountain a short distance after running from the 59th mile tree and run down the side of the mountain on the Tennessee side and probably at about one-third of the distance we topped out again on the mountain, and another short distance we left the mountain on the West side and got something like 15 or 20 poles from the top of the mountain. I don't remember now without the notes the distance and didn't reach the crest of the mountain at all. We reached the bald spot where there was no timber growing, not bigger than a Huckleberry stump. We continued in that bald spot to the end of the mile.

D. 11. You returned then to the 59th mile tree to run the courses of the alleged Davenport notes Westerly, did you?

A. Yes.

D. 12. Now describe in your own way, generally, what you and Mr. Williams did, and what you found?

A. Before we returned or made back to the 59th mile tree we took notes of a high peak that was Southwest of the 59th mile tree and read the bearing of it with or rather on the compass, don't know that we made any note of it, but at the 59th mile tree we again read that bearing and it would lead us to the Eastward of that high point. We then run by the calls of the Davenport field notes by the bearings Southwestward and followed a little, or very nearly the top of the

crest of the mountain for a short distance, then left the crest of the
mountain. I think we got a little on the East side of the
2528 mountain for a distance. We left the crest of the mountain
and went on the West side for a short distance may be half
the length of the course, then got on to the East side of the moun-
tain, and then crossed back on to the West side I believe all in that
first course. Now the first course ended near the top of the moun-
tain, but on the East side. The second course ended on the West
side of the mountain, and the third course on the West side of the
mountain, but near the top, approximately speaking probably 150
yards from the top; then the next course ended some 15 to 20 poles
West of the mountain and from that on we kept getting further and
further from the crest of the mountain as we proceeded Southwest.
We went some two or three miles strictly following the courses and
distances of the line as called for by the Davenport notes, then
returned to the 59th mile tree; and it had been suggested that the
Commissioners run their courses as called for sighting from peak to
peak, or from some natural object to another natural object, and
measured the crest of the mountain. Mr. Williams took the compass
and plumb and run the courses, I took the chain and measured the
distances and at the end of the distance called for in the course I
would call to Mr. Williams and he would measure at right angles to
the line he was running to the top of the mountain and take a new
start trying to fit the courses to the top of the mountain the courses
and distances. We continued that for some three or four miles,
three miles I think, and we couldn't fit them in that way. The
courses with the distances would throw us off the top of the mountain;
the last course we run or next to the last the course in which we
crossed the Turnpike was some distance off. Without the notes I
can't speak positively.

D. 13. You mean that you haven't got your notes here?

A. Mr. Williams kept the notes. I verified the notes from time to
time.

D. 14. Has Mr. Williams got those *nights* here now, to-night?

A. I suppose he has, he had them here to-day. We were some 10
poles off of the crest of the mountain where we crossed the Turnpike.
The end of the course measured on the top of the mountain ended
just South of the Turnpike road. Mr. Williams was over to the
right so far that he couldn't judge what a right angle would
2529 be, in fact he couldn't locate me where I was, so he came to
me and ran a right angle from me to the line he was running,
some 10 poles to the intersection of the lines, and he took a new
start at that point, and at the end of next course he was so far from
me that I had to go down to the side of the mountain and raise my
voice to attract his attention. He was by the side of the mountain
and across a branch from the top of the mountain. The branch
paralleled the mountain or nearly so and a quarter of a mile from it,
and he was across that branch from me, and from there the next
course run to the East side of the mountain, I believe, and we were
getting to where it run off from the mountain on the East side, and
the next course run nearly at right angles to the mountain on the

West side just went off to the gorges and we abandoned that part of the survey, but at intervals along we would take the course from one peak to another peak and examine the notes to see if there was any course called for in that vicinity that would fit the course from one peak to another peak with any reasonable allowance for change of variation. We only found one place in which the notes would reach at the end of the course the top of the mountain, that was a short course starting some 10 poles off of the State Line and at the end of the course landed on the State Line. The only course we found from the 59th mile tree to about the 62nd mile tree. Then we took up the survey where we had signed off on the preceding day, running with a variation of 5 degrees, and continued the running of the call: the courses and distances of the field notes to and crossing Tennessee river and crossing Slick Rock Creek and found the end of the 63th mile about 117 or 120 poles Southwest or South 35 West from the mouth of Slick Rock Creek and on a high ridge and near the crest of the ridge, then continuing the courses we kept entirely to the East of the creek at a distance

Q. (Interrupting.) You mean East of the creek?

A. West of the creek at a distance varying from a quarter of a mile down to 20 chains, 10 poles, for about 4 miles, at the 2330 70th mile we were very near the crest of the Cobbler Stack mountain, at the 72nd mile, which in the field notes calls for a White Oak on the top of the ridge between the aforesaid creek and Slick Rock Creek we were Southwest of Slick Rock Creek about 90 poles.

Q. 16. You mean Southwest of Slick Rock Creek?

A. Of Citico Creek about 10 poles, and at that point we quit the survey because we were notified to be here in a law suit at Knoxville to attend a law suit in the United States court. That much of the survey from the Northeast end of the work we done.

Q. 17. Now Mr. Hale after you got through with your attendance here in Knoxville on the Federal Court as witnesses, you and Williams, what did you do?

A. We then went to where the Citico Turnpike road crosses the Citico Mountain at the point, the undisputed point, where the 101st mile tree should stand and run the line called for in the Davenport field notes South with 5 degrees variation to determine whether or not we had made the proper allowance for variation. For two miles we followed pretty closely to the marked trees.

Q. 18. You mean with 5 d grees variation?

A. Yes, with 5 degrees variation. For two miles we followed close to the marked trees, sometimes finding them on one side of us and sometimes on the other, but close to us and within a reasonable distance for a survey of that kind. We continued that line to and crossing the Hiwassee river crossing it three times to the Maple tree on the South bank of the river called for. As to the Maple tree I never have been right at it and examined it myself but it has been pointed out to me a number of times across the river. I have no doubt it is the same tree they marked. We verified our variation in that work. Then returned to the 101st mile tree and

reversing the courses as called for by the Davenport field not
and measuring the distances. The first course didn't start
with the crest of the mountain. It immediately, within the fi
two or three chains left the crest of the mountain. Where
2331 six chains I mean a chain of two poles' length. Within
or 15 chains we were down on a branch, crossed the branc
and never got back to the crest of the mountain at all. We follow
that line by the courses and distances given in the Davenport fie
notes to Tellico river, and the nearest point that we were ever
the undisputed State line was where we crossed the top of t
Unicoy mountain, about something like 10 chains East or Nort
east of where the State Line reaches the top of the Unicoy mountai
At Tellico river we were some three quarters of a mile down t
river from the line as contended for by North Carolina from t
86th mile tree or purported mile tree or Holly, not down the riv
with the meanderings of the river, but by a line run straig
and at right angles to the last known course or the course th
should reach the 86th mile tree running backward.

D. 19. I will ask you to state why Mr. Hale you and Mr. Willia
didn't complete this line, this survey, all the way through from t
59th mile tree Westerly, and from the 101st mile tree Easterly??

A. From the 59th mile Westerly we didn't have time because
were subpoenaed. I was subpoenaed and Mr. Williams was notifi
to be here on attendance in the United States court. From the 10
Northeasterly we didn't have time because we were notified to
here on the 28th, I believe it was, of August for our depositions
this case, and there was not sufficient time to run the line through
either to run them both ways and the work in the middle.

D. 20. Now I will ask you to state Mr. Hale whether you parti
pated with Mr. Williams in laying down this line on the blue pri
copy of Mr. Burn's Exhibit "D", which is made Exhibit "AA"
Williams' deposition, and which shows the running of yourself a
Williams Westerly from the 59th mile tree to the 72nd mile tre

A. Yes, I helped to do that.

D. 21. Is that a correct, or rather an accurate representation
your running of that line as compared with the line laid down th
on that map, showing the North Carolina contention according
the scale of that map?

A. No, it is not.

D. 22. In what respect is it not?

2332 A. There is either a little discrepancy in the surveying
Mr. Burns and ourselves, or in the plotting by Mr. Bu
and ourselves. At one point this line very nearly touches
creek.

D. 23. What line do you mean?

A. The red line running from the 59th mile tree Southweste
very nearly touching the creek is closer to the creek in fact th
we ever got in the survey, so that the whole line is a little bit E
of where it was actually run.

D. 24. You mean the whole of this red line?

A. The greater portion of it. At the Fodder Stack we were v

closely tied up, but in the interim between points the line at one place is closer to the creek than we ever got to the creek with the survey.

Q. 25. You mean this red line as laid down on this blue print map is closer to the representation of the creek along there by Mr. Burns than you got in your survey?

A. Yes, that is what I am driving at, owing to a discrepancy in the plotting or showing of the two lines. In one instance the surveyor might have got better measurements than in another, and it would make a slight difference.

Q. 26. What was the closest that you ever got to that creek?

A. I don't think we were closer than that at any point.

Q. 27. Then as I understand it, from the 72nd mile tree the red line is merely plotted on according to the distances and of the courses and calls to the Hiwassee river?

A. Yes, from the 72nd mile circle, marked 72 on this, the courses and distances are merely plotted from there to the 101st mile and then southward.

Q. 28. Now then Mr. Hale, as I understand it, this blue print map of Mr. Burns' Exhibit "D", Williams' Exhibit "AA", shows the actual running by yellow line of yours and Mr. Williams from the 101st mile, so called, at the Unaka Turnpike Easterly to the Tellico river, or to where the Tellico river would cross that line, if it were extended on Burns' map?

A. Yes.

Q. 29. And then for the remainder of the distance East-erly to the 59th mile that yellow line was merely plotted in by you and Williams?

A. We run a little Northeastward from the river, we run out the full course of the line and a part of the next course. The river crosses that line a little back of what would be the 86th mile by the calls of the Davenport notes. We run across the river that line out a full course and by observation of the country we decided that we had better run a little further so that at a right angle of the first course of the 87th mile would strike our line, and from that point on Northeastward the lines are plotted by the courses and distances of the Davenport notes.

Q. 30. Now then I call your attention to the tracing, Exhibit "HH" to Williams' deposition, and which has noted on it the following: "Plot of State Line claimed by North Carolina and line surveyed and plotted from each end by Davenport notes, scale 1 inch 2,000 feet, made by Williams and Hale". I will ask you if you participated with Williams in making this map?

A. Yes.

Q. 31. Now from a point at the Northeast end of the map, marked 59, I see a solid red line running to a point, which is designated 72. I will ask you to state if that represents the surveyed line according to the Davenport notes by yourself and Williams which you have described heretofore in your deposition?

A. Yes, that represents the line that we surveyed by the courses and distances of the Davenport notes.

D. 32. Now at the Southwest end of the map, beginning at a point noted as 101 and running in a Southerly direction I see a solid red line crossing the Hiwassee river three times. Is that the line run by you and Williams as you have heretofore described?

A. Yes, that is the line.

D. 33. Then I see a solid red line beginning at 101, running Northwesterly around to the Tellico river. Does that represent the line surveyed by yourself and Williams from the 101st mile tree, so-called, to the Tellico river?

A. Yes. I think I want to make a correction in a statement made by me.

D. 34. Statement made in the absence of the notes?

2334 A. Yes.

D. 35. What is it?

A. I said in a general answer that we run a line at right angles to the first course of the 86th and the 87th mile. I want to correct that and say it is the second course in the 87th mile that we run at right angles.

D. 36. Now Mr. Hale, I see running from the 72nd mile tree or mile circle, indicating the end of the 72nd mile as actually run by you and Williams, a dotted line running Southeasterly and Southwesterly to a circle that is marked 81. What does that represent?

A. That represents the courses and distances of the Davenport field notes as plotted by us continuing the line from the 72nd mile.

D. 37. And the direction of that line as plotted by you in relation to this black line, which shows the North Carolina contention and also the undisputed State line part of the way—the North Carolina contention and a part of the way the undisputed State Line?

A. Yes, that shows the relation of the courses and distances in the Davenport field notes to the State Line as contended for by North Carolina—part of that line being undisputed.

D. 38. Now coming from the 101st mile to the 86th mile—along this red line is a solid red line; then Northeasterly I see a dotted line. What does that represent—a plotting of the line?

A. Represents the plotting of the line of the courses and distances of the Davenport field notes reversed and their relation to the State Line.

D. 39. Now did you and Williams when you were down here on Tellico go to this alleged 86 mile tree or Holly?

A. Yes.

D. 40. Did you try to run out the Davenport field notes from that Holly?

A. Yes.

D. 41. For the 86th mile?

A. For the 87th mile.

D. 42. For the 87th mile I mean. Now North Carolina's contention runs the line from that Holly up Iron Ridge to the main mountain and then Southwesterly with the main mountain, does it not?

2335 A. Yes, that is the contention.

D. 43. Now the calls in these Davenport field notes for the

87th mile to "South 20, West 80 poles, South 65, West 240 poles to a Red Oak". Did you run out those two calls?

A. Yes.

D. 44. Did they conform to this Jenks Ridge line?

A. No. At the end of the mile we were 100 poles West of the Jenks Ridge, or West of the top of the mountain, a little Southwest of the ridge.

D. 45. At the end of the first call "South 20, West 80 poles", where were you?

A. We were about 10 poles West of the crest of the mountain in the head of a broad flat hollow near a hornet's nest.

D. 46. Then at the end of the second call "South 65, West 240 poles"?

A. We were on what is known locally there as the Big Ox Branch.

D. 47. How far from the top of the mountain?

A. 100 poles.

D. 48. State then Mr. Hale whether those two calls will in any manner fit this line claimed by North Carolina from the Holly tree up Jenks Ridge and then Southwesterly on, or with, main mountain?

A. No, they can't be made to fit that.

D. 49. You have done a great deal of surveying down and about there before, haven't you, Mr. Hale?

A. Yes.

D. 50. When did you first discover McClellan's mile stones beginning down there at the Turnpike and set up along the line at intervals all the way to the Tennessee river?

A. In the year 1896 when I first discovered them, but my first discovery was not at the Turnpike road, but near the Stratton Bald on the mid-reputed line, is the first intimation I had of them on the ground. I had heard rumors of them. I was Northeastward from the top of the bald when I saw some letters cut on a solid rock and made some enquiries about it from parties with me who claimed to know and told me they had been cut by McClellan; then something like one mile Southwest of that I found a rock with 2536 letters on the rock "N. C." and some figures, I don't remember what the figures were without my field notes.

D. 51. Now where is that 15 mile stone erected by McClellan, beginning to count from 1 to 15 at the Turnpike down here, which is said to bear the inscription "86-15"?

A. That is one and one-half miles, or about that nearly West from the purported Holly tree and about a quarter of a mile nearly South from what is called the Little Bald at the head of the West Fork of Tellico river. That is the Little Bald is at the head of the West Fork of Tellico river and about one quarter of a mile South of that and near the top of the next Knob South of that is the rock marked "N. C. 86-15".

D. 52. And about how far Southwest of Jenks Knob is that rock "86-15"?

A. Speaking without making the calculation I would say some three quarters of a mile.

D 53. Now Mr. Hale, how often have you been along that mountain of the mountains in there from Jenks Knob to Rocky Knob and around to McDaniel Gap?

A. Some three or four times.

D 54. I will ask you to state if you know where the head of Beaver Dam Creek is?

A. Yes. I know where the head of a long nearly straight valley is through which the waters of Beaver Dam Creek flow.

D 55. How close to the mountain does that valley head?

A. Right up against the mountain, not under the crest of the mountain. I don't suppose you would have to go over 300 or 400 yard to get water on that side and water from that gount near Jenks Gap runs in a Southwesterly direction nearly straight for several miles in a valley. There are several cuts on it that clearly define the valley and you could see it if the trees were not there I think.

D 56. Now passing along that mountain range there, state whether or not the head water of Beaver Dam Creek are easily discernable?

A. Yes from the general trend of the valley I would say that the main head of the Beaver Dam Creek would be very easily discernable.

2337 D 57. If persons passing along that mountain top, they could hardly mistake what was the head of that stream could they?

A. No I would say not.

D 58. Now how far East of Jenks Knob is the head of that stream Beaver Dam Creek?

A. It is a half a mile though there are waters that flow into it something like two mile. East of it but I would say the main head is a half a mile East from Jenks Knob. There are waters that flow into it two miles East from that point but it don't from the main head of the creek until it would get somewhere near the Jenks Knob.

D 59. Now Mr. Hale since this map was made and during the examination of Mr. Williams when my attention was first called to the matter I had him lay down approximately the location of the head of Beaver Dam Creek according to his idea. It is here on the map marked "Head of Beaver Dam Cr." I will ask you to state how nearly that accords with your understanding of the location of the head of Beaver Dam Creek?

A. Without notes to calculate and aside from I would say he had the head of that a little too near to the Jenks Knob probably a quarter of an inch on the scale of that map.

D 60. Now Mr. Hale I call your attention to what you did, what you and Williams did when you crossed Little Tennessee river and Slick Rock Creek on your first survey. The call of the Davenport notes after the 64th mile is "South 75 West 190 poles crossing Tennessee river to a large White Pine South side of the river at the mouth of a large creek 65th mile." Now I believe you stated in running that line that the end of it was some 176 poles approximately Southwest from the mouth of Slick Rock Creek?

A. Yes sir.

D 61 Now I will ask you to state whether you and Williams went to the mouth of Slick Rock and endeavored to fit the first call in the 60th mile to the ground there, which call is South 80 poles up said creek." Did you run that call?

A Yes. Before Williams got to the creek with the line that I started on running we got across the river and away from the river, then we went on down to the creek following the bank of the river and made a thorough search for the Pines to see if there was any indication of marks. I found none. When Williams reached the creek with the line we put a stake down just after we crossed the creek, noted the distance, then went down to the mouth of the creek as near to the mouth of the creek as was possible for a tree to grow and from the East bank of the creek started on a line South 3 degrees West which would be South with a variation of 3 degrees.

D 62 You mean on the East bank of the creek?

A We started on the East bank of the creek on the lower side of the creek on the river and immediately on the bank of the creek and run that course South 80 poles. I assisted with the chains and looked after the chainmen. Mr Williams run a compass or a distance up there and then I followed up the bank of the creek hunting for a mile tree and got out to the end of the line beyond the end of the line before the compass and chainmen got there. I went up all the creek on the side of the mountain about where I thought they would cross and sat down. They came to me and I asked the chainmen how many chains that was. They told me how many cuts and how many chains for it was passed into the cane. They still had not reached the creek. The creek makes an abrupt bend to the right within a couple of hundred yards of where I was. They hadn't reached the creek and were continuing on on that course South. I asked Mr Williams if he had stopped at the end of his distance. He said he did and turned the compass on the next course and it run right up this mountain pointed up the side of the mountain.

D 63 Now Mr Hale I will ask you to state whether or not you were running that line the first call in the 60th mile above the creek is on the West side of it?

A The line crossed the creek within the first six or seven chains and continued on the West side of the creek and leaving the creek something like 10 chains between 30 and 40 chains they were down pretty close to the bank of the creek, then left the creek without touching it on the West side, left the creek and run up on a mountain some 5 to 10 chains probably from the creek and at the end of the course the call turning to the right.

D 64 That is turning to the West?

A Yes. It would then run up a ridge. I was ahead of the surveyor and had located the course but was expecting it to get close to the creek, but when they got there I asked the chainmen the distance they had then and tested the distance and was continuing on course and I asked the surveyor if he had turned the corner at the end of his distance. He said he had and it would run right up that ridge.

D. 65. How far were you West of that creek at the end of that call in the 66th mile?

A. From 8 to 10 poles, may be further.

D. 66. Then the second call is "South 40, West 80 poles," and that would be to the right, wouldn't it?

A. Yes.

D. 67. Still bearing away from the creek?

A. Yes.

D. 68. And the next course would be "South 70, West 40 poles," and that would still be carrying you further West, wouldn't it?

A. Yes, the first one 30 degrees and another additional 40 degrees would make 70 degrees to the right and with those two courses in the mile would put you on the side of the mountain and away from the creek.

D. 69. Now you say you searched there for a pine?

A. Yes, I spent possibly an hour. The ground was very rough and after crossing the river and running across the point before they got to the creek, and I put in the whole time searching for a Pine, or indications of a Pine around the mouth of the creek. I found no pine close to the mouth of the creek. I found a large fallen Pine below the mouth of the creek, some two or three chains, six poles probably, I examined over it and all around it and couldn't find no marks of any kind.

D. 70. Find any stump there?

A. Not near the mouth of the creek. I found a stump that I thought was a Pine until I examined it closely, and found
2340 it was not a Pine but an Oak stump.

D. 71. Mr. Hale, as I understand it, at the end of the 72nd mile you were a mile and three quarters from the top of Big Fodder Stack Southwesterly?

A. Yes.

D. 72. Then if there had been added to that the 60 poles which were not included in the copy of the notes furnished you and Williams in one of the calls North of the river, you would have been about two miles to the West of Big Fodder Stack, wouldn't you?

A. Lacking about 20 poles, a little more than 20 poles owing to the change in bearing.

D. 73. Assuming that in running from the 59th mile-tree to the 72nd you made a gain of approximately two miles over the Davenport notes as claimed by North Carolina, then if you had run the entire 116 miles from the beginning to the Georgia State Line, how much would you have gained, assuming the same proportion of gain along the whole line?

A. I haven't made the calculation.

D. 74. That is you gain approximately two miles in thirteen?

A. Well I will say one mile in seven for an even calculation and the whole distance one hundred and sixteen miles you would be more than sixteen miles in Georgia.

D. 75. I started to ask you about that tree found by Gainnett and blocked by Mr. Burns, or from which he produced a block last December. Were you with Mr. Williams when he went back to that and made the examination which he has testified about?

A. Yes.

D. 76. What did you find?

A. I found in the stump where the annual rings were separated. Williams called it a wind shake. I told him I didn't think it was a wind shake as it didn't extend far enough around. We cut out a section a foot long or more and found two distinct blazes in the stump below the cutting made by Mr. Burns. The blazes approximately a foot long. Two of them run one into the other.

D. 77. Was there any evidence of the lower part of that
2341 piece Mr. Burns cut out having passed through a blaze.

A. No, I can't say there were evidences of it. It is my belief that there was a hack or a blaze between the lower part of his cutting and the curf or slope of his cutting.

D. 78. Well the curt is the sloping angle made by cutting into the tree to block it out at the lower end?

A. It is the upper part of the notch cut into the tree for the purpose of blocking or cutting down a tree and is cut at an angle or a slope, while the lower part is usually cut at right angles from the bark.

D. 79. What part—the lower part of the curve did you think you found a mark?

A. I didn't see any mark. The appearance of the block produced by Mr. Burns led me to believe that there was a continuous row of hacks in the tree for an indefinite distance up and down the tree, and it is my belief that in cutting out his block he cut out one of those hacks, probably not noticing it.

D. 80. At any rate the blazes which you found were partly below the block which he produced here?

A. There were some notches below the end of the block which he produced here and the top of his cutting.

D. 81. They were down and underneath the block which he produced here?

A. Yes.

D. 82. In a line with that block?

A. Yes.

D. 83. Did you count the rings of those blazes which you found out there before, I mean below the block which he cut out?

A. 87.

D. 84. Have you recounted the rings which he produced here on the block last December?

A. Yes.

D. 85. How many did they count?

A. 87.

D. 86. Did you cut on the other side of the stump?

2342 A. No—yes, we cut on the other side of the stump, but we found nothing.

D. 87. Didn't find any marks at all?

A. No. We only found the marks on the West side of the stump, and the block we cut out added to the block that Mr. Burns produced and the space between the blocks as indicated by the cutting in the tree would make that block if put together a continuous line of cuttings in that tree for approximately four feet in length up

and down the tree, beginning from a foot to fifteen inches from the ground and extending about five feet up the tree.

D. 88. Were the marks that you found below that block on the stump produced here by Burns hacks or blazes?

A. Two blazes distinctly.

D. 89. Now I will ask you Mr. Hale, whether in your opinion after an examination of these Davenport notes and the survey of them to the extent you have described and your reconsideration of the ground and conditions generally surrounding the disputed territory the map of 1821 was made from the Davenport field notes?

A. No, I don't think it could have been from the Davenport field notes. I couldn't have made the map from those field notes.

D. 90. You say you couldn't have made that map from the Davenport field notes?

A. No, I couldn't have made that map from the Davenport field notes and conform to the notes.

D. 91. I will ask you to state whether the examination of those notes or subsequent work done in surveying those notes as you have described and your further consideration and examination of the ground out there has caused you to alter your opinion in any way as to the location of the boundary line between the States as you have heretofore testified?

A. No, taking the map of 1821, the Davenport field notes and the report of the commissioners in connection, I don't see how any one could go up Slick Rock Creek and up the Fodder Stack lead for the State Line

2343 D. 92. What about going down State Ridge and crossing Tellico river at the Holly?

A. They might have run up Slick Rock Creek and down State Ridge, but their report clearly shows to my mind that they were tentative lines, that they didn't adopt that as the line between the States.

D. 93. What, in your opinion, did they find according to that report?

Gen. BICKETT: State of North Carolina objects to that—let him tell what he found.

D. 94. Where, in your opinion, does that report and your examination of the ground and all things taken into consideration with your knowledge of this case, show the line to be between the States, and your experience as a surveyor?

A. I believe it to be on the ridge East of Slick Rock Creek, running up to the Hangover, and thence back to the point marked Junction, called Junction, where the two contentions come together, then following the undisputed State Line to the point called County Corner, then leaving the North Carolina contention and following the divide of waters, or water shed, around the head of Tellico river and back to Jenks Knob to the undisputed State Line.

D. 95. Now your reasons, if you want to give it?

A. First, the approach to the Tennessee river at a point opposite to the end of a ridge it is a broad face at that point. Of course there

are ovals in it called spurs, and looking at it from a point North of the river we are supposed to strike the main ridge at the nearest and most accessible point from the river. There can be no doubt in the mind of any one who has been there and seen it that the ridge on which is Stratton Bald, the Hao and the Hangover is the main ridge, and the easiest and most accessible route to that is immediately across the river from the point at which the commissioners strike the river and mark the State Line; then at the Laurel Top and going down toward the Tellico river looking Southwestward the highest peak is Grassy Knob, and any one would be very easily lost
2344 at that point. Going down from Laurel Top toward Grassy Knob the water shed is off to the left and lower down and it could be very easily overlooked but after passing Grassy Knob for a half mile to three quarters of a mile it is very easy to be seen that the waters from the ridge to the left or Southeastward flow to the East and Northwestward or to the East and North and I believe that the commissioners run down that ridge to and crossed Tellico river, but their report shows that they abandoned the line and adopted a line around the head waters of Tellico river and the map of 1821 sustains that report in showing a continuous ridge at that place, and all the waters of Tellico river in Tennessee.

D. 96. Mr. Hale, I call to your attention a map, Exhibit "FF" to Williams' deposition, entitled "A map of the Cherokee County in North Carolina surveyed in the year 1837, drawn from the returns of Deputy Surveyors by R. Deaver, Pres. Sr." I will ask you to state if you have examined that map here in the court room?

A. I have.

D. 97. You will see on that map a range of mountains running from the Little Tennessee river around to a point noted on the map as "Hickory—Rock" and along that range of mountains is inscribed "Main Ridge" leading to the Unicoy Mountain and also State Line and Main Dividing Mountain. Tell me Mr. Hale what, in your judgment, as a surveyor, this map shows?

A. It shows a continuous ridge from the Tennessee river to the point marked "Hickory—Rock" State Line.

D. 98. Does it indicate to you as a surveyor that that continuous ridge is intended to mark the boundary line between the States?

A. Don't purport to mark the boundary line between the States, but the boundary line of the Cherokee Country.

D. 99. What does this mean "State Line and Main Dividing Mountain?" Do you understand that that means the Western boundary line of North Carolina?

A. Yes. At that point it seems to do so, but further down toward the Tennessee river it says main ridge leading to the Unaka Mountain without naming the State Line. I don't know from that whether it is intended to indicate the State Line or not

D. 100. What, in your opinion, does this ridge leading to
2345 the Tennessee river indicate—the line between the States?

A. It indicates the boundary line of the Cherokee Territory as following a continuous ridge.

D. 101. That is the boundary line of the Cherokee Country in North Carolina?

A. Yes, what it appears to be.

D. 102. I see a little bit of etching just Northeast of the Tennessee river. I will ask you to state if this map doesn't show the line on the South approaching that bit of etching just opposite it?

A. It does, and if that etching on the North side is intended to show the State Line, then I would take it that that on the South side also intended to show the State Line immediately opposite the line approaching the river on the North and following a continuous ridge around to the "Hickory—Rock."

D. 103. Mr. Hale, I notice an etching showing a mountain running up to this State Line and Main Dividing Mountain to a point on the Southeast of said line and just about opposite some lines which seem to indicate a stream is designated on said map "East Fork Tellico." I will ask you to state whether or not you are familiar with the territory on the North Carolina side of the mountain around the head waters of Tellico?

A. Not for any great distance from the mountain.

D. 104. What streams run off or head off if any to the main or dividing ridge between the States at McDaniel Bald?

A. The Little Snow Bird Creek heads against the mountain within 30 or 40 yards off the top of the mountain just North of McDaniel Bald and Davis Creek heads just South of the McDaniel Bald, both flowing into North Carolina one, Snow Bird Creek flowing into Cheoah and Davis Creek into Hiwassee river; and I have been around that mountain several times with men who are familiar with that country and have talked with men who knew the country much better than I do from that point Southeastward. One Jasper Fain, and he at one time told me that that ridge leaving McDaniel Bald was the divide between the Cheoah and the Hiwassee river.

2346 D. 105. Well, I will ask you to examine this topographical map, Exhibit "GG" to Williams' deposition, and state whether the dividing ridge between the waters of Hiwassee and Cheoah is shown on that map to reach the divide of the waters right at McDaniel Bald?

A. Yes, the Snow Bird Mountain or the divide of waters between the Little Snow Bird Creek flowing into the Cheoah and Hanging Dog Creek and Davis Creek flowing into the Hiwassee, leaves the Tellico divide at McDaniel Bald and runs Southeastwardly in about the same general direction as the etching on that Deaver map for some four miles or more.

D. 106. I call to your attention on this Deaver map of 1837, Exhibit "FF" to Williams' deposition a stream that is marked "Snow Bird Creek," but it doesn't head any where in the neighborhood of this divide between Cheoah and Hiwassee, or the divide between North Carolina and Tennessee. Do I understand you to say that the head waters of Little Snow Bird are up here close to McDaniel Bald?

A. Yes, in a very short distance of McDaniel Bald and heads a very short distance from the crest of the mountain.

D. 107. I will ask you if it does not so appear on this topographical map, Exhibit "GG," to Williams' deposition?

A. No, they have shown their drawing of the stream away from the top of the mountain, but from my knowledge of the territory the mountain top it is within 40 yards of the spring at head of that water course.

D. 108. But there is a Little Snow Bird which heads at Snow Bird Creek, according to the scale of this topographical map, which heads about a half mile from McDaniel Bald?

A. Not close to McDaniel Bald, but very close to the gap just North of McDaniel Bald. It heads within 40 yards of that gap, just North of McDaniel Bald.

D. 109. You say you have got water out of it several times?

A. I drank water out of it several times. It is called the Cold Spring Gap.

D. 110. Now then at what point do you say this dividing ridge between the waters of Cheoah and Hiwassee on this Deaver map of 1837 approaches this State Line and main dividing mountain?

2347 A. Taking a sketching of the Tellico River—East Fork of Tellico river—the sketching of a continuous water shed or ridge around the head of Tellico river, I would say it left the Tellico river water shed at McDaniel Bald.

D. 111. Now noted on this Deaver map of 1837 is a mark intended to indicate a stream I suppose and noted "East Fork of Tellico." Do you know an East Fork of Tellico?

A. No, I know a North Fork and a West Fork and a Middle or Main Fork.

D. 112. Which of the forks, if any, does head in there at McDaniel Bald?

A. The Middle Fork, called the East Fork I suppose to designate it from the North and West Fork. The West Fork is more commonly known as Little Bald River.

D. 113. And the North fork heads further over to Citico?

A. Yes, the North Fork heads close to Citico.

D. 114. Mr. Hale, I show you a transcript from the Chancery Court of Monroe County, certified by Vastine Stickly, Clerk & Master of Chancery Court of Monroe County, containing pleadings, certain testimony and the decree of the court and involving the title to a tract of land covered by Tennessee Grant No. 11091 to John H. Morton and Samuel J. Griffitts. I will ask you to state whether you are familiar with the location of the land covered by that grant and described in the decree in said case?

A. I am.

Gen. BICKETT: State of North Carolina objects to this on the ground that it is irrelevant.

D. 115. Whereabouts is that land located?

Gen. BICKETT: State of North Carolina objects to this on the ground that it is irrelevant.

A. It is located on the waters of Slick Rock Creek and Citico Creek, and the Western line of the land involved is on the ridge from Hangover to Tennessee river east of Slick Rock Creek.

D. 116. Now I read you a part of the description contained in the decree in this case: "Beginning at a cedar on a signal station on the line between North Carolina and Tennessee bordering Mon-
2348 roe County, Tennessee; thence with said State Line between said State North about 14½ East about 81 chains to Hangover Rock; thence following said State Line to and crossing the Little Tennessee River to a stake or tree somewhat above the bank of said river, a corner to a Peek or Parsons entry", etc.

I will ask you to state whether or not the description there contained and in the Grant as set out in the bill conforms to the Tennessee contention of the State Line from Hangover to the Tennessee river?

Gen. BICKETT: State of North Carolina objects to this on the ground that it is irrelevant.

A. It is, but my recollection is that the Grant more specifically describes the ridge, I am not positive about that.

D. 117. You are right—the exact calls and distances are set out in the Grant as shown in this record which I ask you to file as Exhibit "AA" to your deposition?

Gen. BICKETT: State of North Carolina objects to this on the ground that it is irrelevant.

A. I do so file it as requested.

Cross-examination by Mr. SCHEELY, on behalf of the Complainant, State of North Carolina.

X 1. Now Mr. Hale in making this running that you spoke of having made and these plottings which you spoke of having made as for the Davenport field notes, or the courses and distances of them I believe you expressed it, you used the same copy of those notes that Mr. Williams testified that he had with him, did you not?

A. Partly. I had a separate copy from him, but we frequently compared notes and once made a general comparison.

X 2. They were the same, were they?

A. Yes.

X 3. Now in plotting these various lines that you have put down on these two plats that you spoke of where the red lines showed your plottings of the Davenport field notes you followed the courses and distances exclusively, I believe you said, and consecutively?

2349 A. Yes.

X 4. Now I wish you would please tell me at what point the 89th mile tree would be on the line that separates North Carolina and Tennessee—what peak would be near there or natural object? I am not speaking now of the Davenport field notes.

A. I couldn't say without a calculation from my own notes but McClellan places the 89th mile tree somewhere, I can't name the

peak, but it is West nearly West, of what is called Cooper Creek Gap.

X 5. How far is it from Beaver Dam Bald?

A. It is a mile and a half.

X 6. In what direction?

A. Southwest of Beaver Dam Bald.

X 7. Then when the Davenport field notes called for the head of Beaver Dam Creek at the 89th mile, it couldn't be the Beaver Dam Creek that you have described?

A. No, I think it would be entirely West of the ridge that divides Beaver Dam Creek from Smith Creek. (The witness now speaking to Mr. Hopkins who was looking at another map as follows): You will find it called Schuler's Creek on that Mr. Hopkins.

X 8. There are waters on Beaver Dam Creek that run out from the East side, both on the North and South of Beaver Dam Bald, are there not?

A. No, not North, but South and East.

X 9. Northeast and Southwest, is what I am talking of when I say on the East and North of it.

A. There is nothing on the North that flows into Beaver Dam Creek.

X 10. There are waters to the Southeast of Beaver Dam Bald that run down into Beaver Dam Creek, are there not?

A. Yes.

X 11. And Northeast?

A. I am not positive, but I think that is Copper Creek, North. The second top as indicated on the topographical map West of Beaver Dam Bald I think is the Copper Creek Knob and the ridge that leaves——

Gen. CATES: Don't interrupt him Mr. Hopkins.

2350 —that knob running Southwest divides the waters of Smith Creek from Beaver Dam. That knob is something like two and a half miles West of Beaver Dam Bald.

X 12. Now I want to ask you for a moment about this ridge on the Denver map that is plotted to run out. Did you express an opinion as to what ridge that was that runs out from what is marked dividing ridge or something of that sort—State Line—now did you express an opinion as to what that was that run out there?

A. Yes, I said I believed that is the ridge leaving McDaniel Bald running Southeasterly and dividing the waters of Chesnk river from the waters of Hiwassee river.

X 13. Then is it correctly plotting to direction and shape on that Denver map?

A. Yes, generally speaking it is correctly plotted.

X 14. Doesn't that ridge run nearly—that you have spoken of—run nearly directly East?

A. No, it runs Southeast and in the same general direction as the ridge shown on the topographical map.

X 15. You mean it keeps up that all along in the same direction as the topographical maps or just starts out that way?

A. It starts that way and continues that way for some three or four miles.

X 16. Now then after that, how does it correspond with the one found on the Deaver map?

A. Its junction or the junction of the ridge shown on the Deaver map with the ridge dividing Valley River and Cheoah river is at a sharper angle than is shown on the topographical map, and the ridge shown on the Deaver map is more than twice as long as the one shown on the topographical map—that is, the dividing mountain between Valley river and Cheoah is nearly more than twice as far South from the McDaniel Bald as it is shown on the topographical map.

X 17. Now in plotting these red lines which you say were made as for the Davenport field notes, you always measured the straight line distance, did you not?

2351 A. Yes.

X 18. That is to say you gave them the full length called for on a straight line?

A. Yes, we did that. We found nothing in the notes that they were other than straight lines.

X 19. But as a fact the measurements had been made not to follow the compass close but to wind around the mountain top or around the streams meanderings. That would have shorten those lines would it have not?

A. It would have shorten the straight line.

X 20. Now in this test that you spoke of from the Holly Tree you say that you measured from the 86th to the 87th mile two courses and run it according to the courses and distances. The end of the second call is for a Red Oak. Did you go to that Red Oak?

A. I don't think there were any Red Oaks near the end of that course, I don't remember of seeing any.

X 21. Now you say you believe that taking this whole thing together you think that the State Line should cross opposite the fore and aft Spruce Pine near the bank of the Tennessee river and go straight on. Would it cross the mouth of a creek in doing that?

A. No.

X 22. And the map of 1821 shows a creek there?

A. Yes.

X 23. And the copy of the Davenport notes shows a creek there on the South side?

A. Yes.

X 24. And you think those things ought to be discarded?

A. Yes.

X 25. And the map of 1821 shows you go up a creek there for some distance thereafter and the Davenport field notes go up the creek for some distance thereafter?

A. Yes, but the report of the commissioners show that they abandoned that line if they ever run it and adopted the crest of the ridge of the main mountain down to where it strikes the Tennessee

2352 river according to the report of the commissioners as the dividing line.

X 26. From what fact do you arrive at that conclusion?

A. The wording of the report as near as I can recollect it—crossing the Tennessee river at the distance of sixty-five miles from the beginning, and from the river along the main ridge to the place where it is called Unicoi or Unaka mountain.

X 27. And you think that warrants the conclusion that they abandoned the calls as set forth in the report accompanying the map?

A. Yes.

X 28. Why do you think they filed that map?

A. As a sketch map of the country.

X 29. And they didn't expect anybody to follow it?

A. No sir.

X 30. They don't say that they have discarded the creek or anything in the plat either do they?

A. I haven't seen anything of that in the report.

X 31. Didn't you testify before, here, that you thought that the State Line ought to cross the mouth of Chesuh river?

A. No.

X 32. Never did in any case?

A. No. I think I did state that I thought the Chesuh river was the creek sketched in and that it had been sketched too close to the State Line.

X 33? But that you didn't think it ought to cross the mouth of Chesuh?

A. I don't remember that I ever made any such statement.

X 34. What is your understanding about that it ought to cross Chesuh river, if at any place?

A. Below the mouth of Chesuh and immediately across from the Hemlock tree. I might have said that if they followed the main ridge all the way from a point a mile or more back from the river the main ridge reaches rather in the direction from where the State Line is marked to the river and to the point of opposite the mouth of Chesuh.

[illegible]

[illegible]

[illegible]

And further deponent saith not.

W. D. HALE.
By WM. MEYERHOFF,
Stenographer.

Sworn to before me on September 5th, 1911.

S. E. CLEAGE,
Clerk Supreme Court.

It is agreed by counsel representing the complainant North Carolina and the defendant Tennessee that the stenographer, Wm. Meyerhoff, may sign the names of the witnesses to the foregoing depositions after transcription.

2354 DEF'T'S EX. "AAA" TO DEP. OF W. D. HALE.

Filed Dec. 2, 1907.

Transcript in the Case of—

In the Chancery Court of Monroe County, Tennessee.

MARY L. MORTON et als.
vs.
OLNEY DOTSON et al.

The bill of complaint of Mary L. Morton, Nora N. E. Hitch and husband, John S. Hitch, citizens and residents of Blount County, Tennessee; A. W. Morton, a citizen and resident of the State of California; Sarah S. J. Wade and husband, William J. Wade; John Parks Morton and Gilbert A. W. Morton, citizen and residents of the State of Texas; Samuel A. Griffitts, George A. Griffitts, S. E. Iddins and husband, W. E. Iddins; Viney Griffitts, Annie Kerr and husband, W. R. Kerr, Lucy Howard and husband, J. D. Howard, and Mary Howard, all citizens and residents of Blount County, Tennessee, complainants, filed in your honor's said court at Madisonville against Olney Dotson, a citizen and resident of Monroe County, Tennessee, and the Babcock Lumber and Land Company, a corporation chartered under the laws of the State of Maine, a non-resident of the State of Tennessee, defendants.

To the Honorable T. M. McConnell, Chancellor, holding the Chancery Court at Madisonville, for Monroe County, Tennessee.

Complainants respectfully show unto your Honor

I.

That by grant No. 14001, dated January 11th, 1886, and recorded in volume 33, at page 270, in the records of the Land Office for East Tennessee, at Knoxville, Tennessee, there was duly and legally

granted and conveyed by the State to John H. Morton and Samuel J. Griffitts, in equal moities, eleven thousand five hundred acres of land lying and being in the counties of Blount and Monroe, and more particularly described as follows, to wit:

2355 Beginning at signal cedar on State line of North Carolina and Tennessee, bordering Monroe Co., Tenn.; thence with the state line of North Carolina and Tennessee N. 14½ E. 81 chains. Hangover rock, N. 34 W. 60 chains to brow above Zipharris Hill, N. 36 W. 75 chains to flat or bench below Z. Hill, N. 20 E. 10 chains to a bluff and rock marked X, N. 54 W. 21 chs. to Little Cliff, N. 19 W. 21 chs. to spotted oak by cliff, N. 36½ W. 11 chs. to chestnut by maple, N. 32 W. 12 chs. *chs.* in open place, N. 14 E. 20 chs. to chestnut on brow, N. 9 W. 35 chs. to a bare place near chestnut, N. 22 W. 20 chs. to 3 chestnuts, N. 23 E. 23 chs. to a spur on ridge, N. 14½ E. 8½ chs. to Spanish oak, N. 36 E. 13 chs. to brow of ridge, N. 13½ E. 8 chs. to Bear Pen Gap, N. 20 W. 56 chs. to high top Totoe Hill, N. 60 E. 16 chs. to hickory, N. 53 E. 18 chs. to lop on ridge, N. 8 chs. to lop to top chestnut, N. 36 W. 15½ chs. to a basin in high top of ridge to locust, N. 54½ E. 18 chs. to Spanish oak N. 14 E. 15 chs. near a locust, N. 42 E. 12 chs. to a crooked chestnut, N. 12½ E. 10 chs. to hickory, N. 41 E. 28½ chs. to two chestnuts, N. 17 E. 22 chs. to chestnut and hickory, N. 11 W. 10 chs. to a small plat, N. 24½ E. 8 chs. to a high top N. 52 W. 8½ chs. to white oak sapling, N. 22 E. 4½ chs. to hickory and pine on bench, N. 14 E. 22 chs. to chestnut on brow, N. 8 E. 12 chs. to hickory, N. 8½ E. 30 chs. to white oak, N. 34 E. 25½ chs. to Spanish oak, N. 25 E. 12 chs. to large white oak, N. 1 E. 53 chs. to black oak and pine Crossing, N. 38 E. 10 chs. to pine, N. 8 chs. to post oak, N. 20½ E. 14 chs. to black oak in gap, N. 37 W. 9 chs. to pine, N. 24 E. 17 chs. passing Lee G. Camp on W. to stone, N. 82 E. 11½ chs. to white oak dead, N. 39½ E. 8 chs. to white oak, N. 30 W. 22 chs. to black oak, N. 21 E. 18 chs. to black oak, N. 41½ E. 20 chs. to black oak, N. 32 E. 144, crossing Tennessee River to stake on bank at about N. 40 W. about 156 chs. along Peck's or Parson's line across Tennessee river, thence S. 70 W. 5 chs. to stake on S. W. Side of Tennessee river S. 10 E. 94 chs. to stake near river S. 63½ E. 10 chs. to Bearden's corner at mouth S. Rock creek, thence with Bearden's line through entire township of 2 N. Range six E. S. 45 W. about 960 chs. to a stake at intersection of Township 2 2355 N. & 1 S. at said range, six E. with said line dividing 2 N. & 1 S. thence W. 180 chs. to a stake at N. W. corner of section 3 & N. E. corner of section 4 of Township 1 S. S. 320 chs. to stake at N. E. corner of section 16, E. 320 chs. to stake at N. E. corner of section 14 & N. W. corner of fractional section 13 S. 160 chs. to state line of North Carolina and Tennessee, thence with the state line to beginning, thence about N. 80 E. 200 chs. to high top East of Ball E. 160 chs. to brow of ridge, N. 75 E. 160 chs. to deep gap, N. 85 E. 160 chs. to the beginning.

So that said conveyance will thus enable said Jr. and grantee aforesaid the said John H. Morton and Samuel J. Griffitts became

and were seized in fee and the owners of the land covered by and described in said grant as aforesaid.

II.

Complainants further show and aver that, after the issuance of said grant and after he became seized in fee and the owner of an undivided one-half interest in said land, the said John H. Morton, on or about the ___ day of July, 1892, died, after having made, published and declared his last will and testament, which was duly admitted to probate in the county court of Blount County, that being the county of the residence of the said John H. Morton, and by which said last will and testament he, the said John H. Morton devised his lands, and real estate, consisting of an including his undivided one-half interest in the land covered by said grant No. 11091, to his widow, complainant Mary L. Morton, and to his children, the complainants Nora N. E. Hitch, A. W. Morton, Sarah Sofia J. Wade, John Parks Morton, and Gilbert A. W. Morton.

So that, the said complainants, Mary L. Morton, Nora N. E. Hitch, Sarah Sofia J. Wade, John Parks Morton, and Gilbert Alexander Morton, are now the owners in fee and entitled to the possession of the undivided one-half interest in the aforesaid tract of land, of which the said John H. Morton became the owner in fee under and by virtue of the aforesaid Grant No. 11091.

Complainant John S. Hitch is the husband of complainant, Nora N. E. Hitch, and the complainant William J. Wade is the
2457 husband of complainant Sarah S. J. Wade, and these complainants are joined with their wives for conformity.

III.

Complainants further show that, after the issuance of said grant and after he became the owner and seized in fee of an undivided one-half interest in the aforesaid tract of land covered by said grant No. 11091, the aforesaid grantee Samuel J. Griffitts died, intestate, leaving as his children and heirs at law, the complainants George A. Griffitts, Samuel A. Griffitts, Ayres Griffitts, Lucy Howard, wife of complainant L. D. Howard, Annie Kerr, wife of complainant W. R. Kerr, S. L. Iddins, wife of complainant W. E. Iddins, and Mary Howard, a widow.

So that, the said complainants, as the heirs at law of the said grantee Samuel J. Griffitts, are now the owners in fee and entitled to the possession of the undivided one-half interest in said land of which their said ancestor, the said Samuel J. Griffitts, became and was the owner in fee under and by virtue of the aforesaid grant No. 11091.

IV.

Complainants further show unto your Honor that for many years their ancestors, the aforesaid grantees named in said grant No. 11091, had a tenant living upon said land and through him had undisputed possession thereof.

V.

Complainants further show unto your Honor that, notwithstanding their ownership of said land, and notwithstanding the fact that they are entitled to the possession thereof and to its use and enjoyment, nevertheless, the defendant, Olney Dotson, on or about the day of January, 1907, entered upon said land, moving himself and his family thereon, claiming the right to use and enjoyment thereof, as complainants are informed, under some kind of a lease or instrument in writing executed by a company styling itself "The Smoky Mountain Land, Lumber & Improvement Company," but just what interest the said Dotson claims in said land complainants are 2558 not advised, however, they aver that the possession by said Dotson of any part of said land is illegal and complainants have the right to have him ousted from said property.

VI.

Complainants further show that the defendant, the Babcock Lumber & Land Company, claiming to be a corporation organized under the laws of the state of Maine, as complainants are informed, is also exercising acts of ownership and claiming title to the lands covered by said grant No. 11091 by virtue of a conveyance made to it by the said Smoky Mountain Land, Lumber and Improvement Company, dated on or about May 5th, 1907, and recorded in the office of the Register of Monroe County, Tennessee, in Book 11, of the records of said office, page 475.

Complainants are advised, and therefore aver, that, in so far as said last mentioned deed—or any other deed or instrument of writing whatsoever—purports to convey to the defendant, the Babcock Lumber and Land Company, any part of the land above described, granted by the state of Tennessee to said John H. Morton and Samuel J. Griffith by said grant No. 11091 aforesaid, the same is null and void and conveys no title to the said defendant as against the title of complainants, as hereinbefore shown.

Complainants are not advised as to whether the said defendant Babcock Lumber & Land Company claims title to said property under or through any other deed or conveyance than the aforesaid deed from the Smoky Mountain Land, Lumber & Improvement Company, but if so complainants aver that any such deeds or conveyances are null and void and convey no title to said defendant as against the title of these complainants, as hereinbefore shown.

VII

Complainants further show unto your Honor that they are informed that the defendant, Olney Dotson, also claims to be a tenant of the defendant Babcock Lumber and Land Company, but whether this be true complainants have no means of definitely ascertaining, and therefore call upon defendants to show how the facts may be.

2359

VIII.

Your complainants, as named in the caption of this bill, are the owners in fee and, as such, entitled to the possession of the lands described in said grant No. 41091, and the said defendants, to wit; in January, 1907 and May 1907, have unlawfully entered upon said property, and are now exercising acts of ownership thereover, so that complainants are entitled to have them ousted from said property and to have their title thereto declared and themselves placed in possession thereof.

The premises considered, complainants pray:

1. That the parties named as such in the caption be made parties defendant to this bill, according to the practice of this court, the resident defendants by service of process and copy of bill, and the non-resident defendant by publication made according to law, and that they be required to answer, but their oaths to their answers, or the equivalent of an oath upon the part of defendant corporation, are hereby expressly waived;

2. That complainants be decreed to be the owners in fee and entitled to the possession of the lands covered by said grant No. 41091, and that a writ of possession be issued to place them in possession of the said property;

3. That the deed from the Smoky Mountain Land, Lumber and Improvement Company to the defendant, Babcock Lumber and Land Company, above described, and also all other deeds and conveyances through, under or by which defendant Babcock Lumber & Land Company may claim, be cancelled as a cloud upon the title of your complainants

4. For all such other, further and different relief as in equity and good conscience they may be entitled to, upon the facts hereinbefore stated;

5. For an injunction against the defendants, restraining them from cutting timber upon said land, or in any way destroying or removing any timber from said property.

2360 This is the first application for an injunction in this cause.

(Signed) MARY L. MORTON ET AL.,
Complainants,
By C. T. CATES, JR., *Sol.*

HARRISON STICKLEY,
C. T. CATES, SR.,
SHIELDS, CATES AND MOUNTCASTLE,
Solicitors for Compl'ts.

STATE OF TENNESSEE,
County of Knox:

Personally appeared before me, the undersigned authority, Charles T. Cates, Jr., who, having been duly sworn, sai- that he is informed and therefore avers the fact to be — the defendant Babcock Lumber & Land Company is a foreign corporation and a non-resident of the

state of Tennessee, and that therefore it will be necessary to make publication for such defendant.

(Signed)

CHARLES T. CATES, JR.

Subscribed and sworn to before me, this Nov. 30th, 1907.

JOHN W. HUDSON,
Notary Public.

2361

Filed Jan. 28, 1908.

In Chancery Court, Monroe County, Tennessee.

MARY L. MORTON et als.

vs.

ONLEY DODSON and BABCOCK LUMBER & LAND COMPANY.

Answer of Babcock Lumber & Land Company to the Original Bill Filed in the Above Styled Cause.

Respondents, in answer to so much of said bill as they are advised is material for them to answer: say:

I.

They deny that the grant No. 41091 dated January 11, 1886 and recorded in the Records of the land office for East Tennessee at Knoxville was duly and legally issued to John H. Morton and Sam'l J. Griffitts for lands described in the first paragraph of complainants' bill; and it is also denied that by and under said grant, the said John H. Morton and Sam'l J. Griffitts became and were seized in fee and the owner of the lands covered by, and described in said grants as aforesaid.

II.

Respondents know nothing of the death of John H. Morton, nor whether he made a will disposing of his property, nor do they know who are his widow and children or who inherits his estate, and strict proof is required.

III.

Respondents know nothing of the death of Sam'l J. Griffitts or that he died intestate, nor do they know who are his children or heirs inheriting his estate, and of these they require proof.

IV.

It is denied that the ancestors of complainants had tenants living upon the lands described in the original bill, and through
2362 them, had undisputed possession of said land.

V.

Denying the Ownership of complainants, or their ancestors, and that they are entitled to the possession of lands, it is admitted that

Onley Dodson as tenant of Babcock Lumber & Land Company is living upon certain lands hereinafter described, and as such tenant is holding the same for respondent Babcock Lumber & Land Company which is the legal Owner thereto.

VI.

It is true that the Babcock Lumber & Land Company is a corporation, organized under the laws of the state of Maine, and now claiming title to certain lands in Monroe County, Tennessee, which is more particularly described hereafter, said respondent acquiring its title to said lands by deed from the Smoky Mountain Land, Lumber & Improvement Company, and respondent, Babcock Lumber & Land Company avers that it has legal and valid title to the lands covered by its deed, notwithstanding the grant No. 41091 under which complainants purport to claim title.

VII.

It is true that respondent, Onley Dodson claims to be, and is in fact, a tenant of the Babcock Lumber & Land Company, and is in possession of certain lands under and by virtue of a lease for the same.

VIII.

It is denied that complainants are the owners in fee and as such, entitled to the possession of the lands described in grant No. 41091, and it is also denied that defendants have unlawfully entered upon said property and are exercising acts of Ownership thereon, on the contrary, respondents are in possession of their own lands by deeds duly executed and recorded, and now have good and perfect title to the same.

Respondent answering further, would respectfully show to the court that it purchased of the Smoky Mountain Land, Lumber & Improvement Company, about 42,000 acres of lands lying in Monroe County, Tennessee, and that said Smoky Mountain Com-
2363 pany, on or about the fifth day of May, 1907 executed a deed there for, which deed was duly recorded in the Register's Office of Monroe County, Tennessee in Book No. 11; page 475, and from the description set out in complainants' bill, which is very vague and indefinite, it is presumed that complainants are setting up a claim to a part of the 42,000 acres belonging to this respondent. It is further presumed in the description set out in complainants' bill, they have undertaken to describe lands on the waters of Slick Rock creek in the 17th Civil District of Monroe County, Tennessee, and lying between said creek and Hangover Ridge or mountain, which ridge or mountain is the line between North Carolina and Tennessee; and in addition, complainants are claiming some four or five thousand acres in the north-east part of fractional township one, south, range 6, east of the basis line, Ocoee District. If such are the lands claimed by complainants, the respondent, Babcock Lumber & Land Company avers that it is the owner in fee, and has

a connected chain title running back to grant from the State of Tennessee for the following lands, to-wit:

Lying and being in Monroe County, Tennessee, beginning at the mouth of Slick Rock Creek where it empties into Tennessee river; thence up the said Slick Rock creek with the line of the White and Bearden lands to the point where the said White and Bearden line leaves the creek, thence following the White and Bearden line to where it intersects the North Carolina line on top of the mountain, south-west of the Hangover; thence with the North Carolina line to the beginning, containing 5,000 acres, more or less.

Respondent is also the Owner of sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 22½, 23 and 24 in the above mentioned fractional township 1, South, 6th range, east of the basis line, Ocoee District, and in Monroe County, Tennessee.

Respondent's title to all the above described land is evidenced by grants duly and legally issued from the Register's office of the Ocoee land district, and by connected chain of title from the State of Tennessee to respondent, Babcock Lumber & Land Company.

2364 Respondent, Babcock Lumber & Land Company avers that it, and those under whom it claims by deed, have been in open, notorious, actual continuous and adverse possession of the lands above described, holding the same by grants and actual conveyance and other assurance of title for more than seven years without any claim by action at law or in equity commenced within that time, and effectually prosecuted against it, or those under whom it claims, and is therefore vested with a good and indefeasible title in fee to the lands described in this answer, and in its assurance of title, and respondent pleads the same in bar of complainants' suit.

Respondent Babcock Lumber & Land Company further avers that complainants, and those under whom they claim, have neglected for over seven years to avail themselves of the benefit of any legal or equitable title which they may have, either by action at law or in equity effectually prosecuted against the person in possession under recorded assurance of title, and are therefore barred from bringing any action whatever. Respondent therefore pleads the same in bar of complainants' action.

Respondent Babcock Lumber & Land Company further avers that complainants' right of action, if any they had, or those under whom they claim accrued more than seven years before the Original bill in this cause was filed, and having failed to avail themselves of said right of action, the same is barred by statute of limitations of seven years, and respondent pleads the same in bar of complainants' action.

Respondent Babcock Lumber & Land Company further shows to the Court that all the land described in the original bill in this cause, if it can be located at all, lie in Monroe County, Tennessee and no part of the same lies in Blount County. All of said lands lie in the Ocoee Land District and no part of it lies in the Hiawassee Land District, or any other land district in Tennessee, and respondent alleges that the description set out in the grant, under which complainants claim, if the same can be located, lie wholly within the Ocoee Land District and therefore the grant emanating

from East Tennessee land office for lands in Ocoee Land District is void.

2365 Respondent Babcock Lumber & Land Company disclaims as to any and all lands not lying in the Ocoee Land District and Monroe County, and especially disclaims as to any and all lands lying in Blount County or in Hiwassee Land District.

All matters not herein admitted or denied are now denied, and respondent prays to be dismissed without cost.

(Signed) McCROSKEY & PEACE, *Sol's.*
(Signed) BABCOCK LUMBER & LAND CO.,
ONLEY DODSON,
By McCROSKEY & PEACE, *Sol's.*

2366 Filed Nov. 28, 1908.

Chancery Court, at Madisonville.

MARY L. MORTON et al's.
vs.
OLNEY DOTSON et als.

Deposition of W. P. Chambers, Witness for Complainant.

The said witness, W. P. CHAMBERS, being duly sworn, deposed and said:

Examination by C. T. CATES, JR.:

Q. 1. What is your name, age, place of residence and occupation?
A. W. P. Chambers 68 years, Cleveland, Tenn., Land Surveyor.
Q. 2. How long have you been a surveyor?
A. About 30 years.
Q. 3. Did you ever live in Monroe County?
A. I did.
Q. 4. How long?
A. Well, 20 years.
Q. 5. Were you ever County Surveyor of Monroe County?
A. I was.
Q. 6. How long?
A. Eight years. I came to Monroe County in 1756, went to the war, came back there after the war and lived there continuously for 20 years.
Q. 7. Whereabouts in Monroe County did you live Mr. Chambers?
A. On Tennessee River, called the Calloway farm.
Q. 8. Little Tennessee River?
A. Yes sir.
Q. 9. How far from the land in dispute in this case?
A. 20 miles, recently I lived in what is called White Oak Flats, about 6 or 8 miles from this land.
Q. 10. Are you acquainted with the boundary line between the States of North Carolina and Tennessee?

2367 A. Well, I know where they claim it to be.

Q. 11. Do you know where Hang-Over Rock is?

A. I do.

Q. 12. Is that on the Boundary line?

A. That is claimed on the State line.

Q. 13. Do you know where Signal Station is?

A. Yes sir.

Q. 14. Is that on t-e boundary line of Tennessee and North Carolina?

A. Supposed to be.

Q. 15. Do you know where the mouth of Slick Rock Creek is?

A. Yes sir.

Q. 16. Are you familiar, in a general way, with the Eastern boundary of what is known as the White and Bearden lands?

A. According to the maps of the Ocoee District I am.

Q. 17. I herewith hand you a plot bearing on it the following legend "Copied from map in Ocoee Land Office in Cleveland, Tenn. June 8, 1897, copied by Ed. Mayfield." and I will ask you what that is?

A. Well this purports to be a map of Slick Rock Creek. This is the Tennessee River and this is Slick Rock Creek, running up here.

Q. 18. Well it also purports to be part of Range 6 East fractional Township 2 North, does it?

A. Yes sir.

Q. 19. And also part of Range 6 East fractional township 1, South?

A. Yes sir.

Q. 20. I see at one end of it the letters as follows "L. T. R.", what does that mean?

A. Little Tennessee River.

Q. 21. Are you acquainted with the survey of that part of the Ocoee Land District, purporting to be covered by this map?

A. You mean from the actual survey?

Q. 22. Yes.

A. I am not.

2368 Q. 23. I will ask you to state whether the land that was sectionized in the Ocoee District extended no further East than Slick Rock Creek, at the particular place purported to be covered by this map?

A. Not according to the maps of the Ocoee District.

Q. 24. Have you been on this land covered by this plot?

A. I have.

Q. 25. Have you made survey along Slick Rock Creek?

A. I have.

Q. 26. How far from the mouth of Slick Rock Creek is it to the line between North Carolina and Tennessee?

A. It's about ten miles.

Q. 27. I mean from the mouth of Slick Rock Creek up the River to the State line?

A. Hardly a half mile.

Q. 28. Please file that plot as exhibit No. 1 to your deposition.

A. I do so as requested.

Q. 29. I hand you herewith a certified copy of Blount County Entry No. 1755, dates September 22nd, 1883 in the name of Samuel J. Griffitts. Please file it as exhibit No. 2 to your deposition?

A. I do so as requested.

Q. 30. I will ask you, Mr. Chambers, whether you ever made a survey of grant No. 41091 to Samuel J. Griffitts and John H. Morton based on said entry No. 1755?

A. I made a survey for Mr. Clarke, of the land called for by that grant.

Q. 31. Have you a map or plot of the survey made by you?

A. I have.

Q. 32. Please file it as exhibit 3 to your deposition.

A. I do so as requested.

Q. 33. Mr. Chambers where did you commence to make that survey?

A. At the mouth of Slick Rock Creek.

Q. 34. Please now describe the route you took and the method by which you made the survey exhibited on this plot, exhibit No. 3 to your deposition?

2369 A. Well, I commences at the mouth of Slick Rock Creek, where it empties into the Tennessee River; then in a general South West course up the creek to what they call 5 mile tree on the creek, (indicating on map). Then we took up the leading ridge there and run up to what we call the Fodder Stack lead and Little Slick Rock lead to the top of Big Fodder Stack or near the top of it, then run in a general southern direction until we came around here—that is, to the intersection of the State line west of the Ball. This route, as I understand it is in a southerly direction or more so than any other. We then kept the main lead known as the State line to the Bob Stratton Ball, then to "Hao."

Q. 35. Is that the same place as the Hang Over Rock?

A. Yes. Then from Signal Station to Hangover down the main ridge between the waters of Slick Rock Creek and Bear Creek (I believe that is what they call it) to Tennessee River to the North Bank to the spruce or Hemlock on the East and North side of the Little Tennessee River on the State Line.

Q. 36. How far from the river is that Spruce or Hemlock?

A. About 150 feet. I had the distance but have forgot just what it is.

Q. 37. About how far?

A. About 150 feet I think.

Q. 38. That Spruce or Hemlock referred to by you is on the Blount County side of Little Tennessee River?

A. Yes sir, on the North side of the river.

Q. 39. Then what?

A. Well the line then, according to my calls run down the river North about 40 West 155 chains to the East bank of the river and then across the river and up the river and back to the beginning point.

Q. 40. You actually run the line to this marked Spruce or Hemlock on the North or East side of Little Tennessee River on the State line?

A. Yes sir.

Q. 41. Then did you actually run the line North 40 West 155 chains called for in the grant?

A. No sir.

2370 Q. 42. Just plotted that on?

A. Yes sir.

Q. 43. Then the next call in the grant after North 40 West 155 chains is South 70 West 5 chains to the stake on the South side of Tennessee River. Did you actually run that line?

A. No.

Q. 44. Then the next call in the grant is South 10 East 94 chains to a stake near River. Did you actually run that line?

A. We took bearings of that from the upper end of it.

Q. 45. Then the next call in the grant is South 63½ East 10 chains to Bearden's corner at the mouth of Slick Rock Creek. Did you actually run that line?

A. We did.

Q. 46. The next call in the grant is thence—with Bearden's line through the entire township; this is the line you ran in the beginning?

A. That is where we begun and we were supposed to run a line through the entire township to State line.

Q. 47. Please state, Mr. Chambers, whether in running that line from the mouth of Slick Rock Creek through to the North Carolina line you ran with the Bearden line or ran according to the courses or distances set out in the grant?

A. I ran as I understood it the Bearden line to come to the creek and the creek was the line. In other words this line should have been surveyed only to the creek and we run to the Creek understanding that to be the line between the White and Bearden land around to State line through the entire township.

Q. 48. Do you mean to say that you followed the Creek all the way around to State Line?

A. We followed the creek to the 5 mile tree and then went West as it is laid down in the Ocoee District, my exhibit No. 1.

Q. 49. Then you run with the White and Bearden land around to the State Line excluding the sectionized land?

A. Yes sir, we did not try to get on the sectionized land at all.

2371 Q. 50. In other words, referring to your Exhibit No. 1. to your deposition you run from the mouth of Slick Rock Creek around the boundary of the sectionized land to the North Carolina State line?

A. Yes sir.

Q. 51. Then this Eastern boundary of the sectionized land at this place being the boundary of White and Bearden lands?

A. Yes sir.

Q. 52. Mr. Chambers, the grant which is filed in this case as Exhibit 3, to deposition of Mrs. Morton, calls to begin at the signal cedar on the State line of North Carolina and Tennessee, in Monroe County. Why did you not begin your survey there?

A. Well it was on the South East part and we were on the North west and all our provisions were there and it was more convenient to commence at the mouth of Slick Rock.

Q. 53. Well known definite place?

A. Yes sir and it was more convenient to commence there.

Q. 54. Now I will ask you to state Mr. Chanders, whether after reaching signal station you in surveying out this grant endeavored to follow the State Line between North Carolina and Tennessee.

A. Well, as claimed by the maps I did.

Q. 55. I will ask you to state whether in surveying that line from Signal Station to and across the Tennessee River, you found any marked trees or other objects which are referred to in this grant?

A. Yes sir.

Q. 56. I will ask you to state whether or not the survey made by you along there from Signal Station to the Little Tennessee River did not conform to what is generally understood to be the line between the States of North Carolina and Tennessee at that place?

A. That is what it is claimed to be.

Q. 57. Now I will read this description, and as I read when I come to any object in the calls which you found marked, please interrupt me and so designate. Is that signal-station a well known place, Mr. Chanders?

A. Well it seems to be well defined.

2372 Q. 58. Is there a cedar there now?

A. No sir. Saw some stumps there, it is a high point there and well situated for a signal station.

Q. 59. That signal station is on the State line is it?

A. Claimed to be.

Q. 60. Then the first call from that point is with the State line of North Carolina and Tennessee North 14½ East 81 chains to Hang Over Rock?

A. Well I did not run on that line. I kept on top of the Hill and took off some turns and then across to Hang-over, "then North 31 West 60 chains to the Brow above Zipharris Hill."

Q. 61. Well what do you understand by Zipharris Hill?

A. Just the name they called it, at that point.

Q. 62. Then North 36 West 75 chains to the flat, or bench below Zipharris Hill?

A. I don't think I have that marked here.

Q. 63. Thence "North 20 East 10 chains to a bluff and rock marked X," have you that?

A. Yes sir.

Q. 64. Then North 54 West 21 chains to Little Cliff?

A. We passed that.

Q. 65. Then North 19 West 21 chains to a spotted oak by cliff.

A. Don't recollect whether we passed that or not.

Q. 66. Then North 36½ West 14 chains to chestnut by maple.

A. We passed that.

Q. 67. Then "North 32 West 16 chains Ch. O in open place."

A. We passed that—a chestnut oak.

Q. 68. Then North 14 East 20 chains to a chestnut on brow.

A. Can't say as to that.

Q. 69. Then North 8 West 20 chains to a large place near chestnut?

A. Passed that.

Q. 70. Then North 22 West 20 chains to three chestnuts. Do you remember that?

A. No sir.

2873 Q. 71. Then North 18 East 25 chains to a Spruce on ridge?

A. I haven't got that here.

Q. 72. Then North 11° East 8½ chains to Spanish Oak.

A. I have red oak.

Q. 73. Then North 30 East 10 chains to cove of ridge.

A. Haven't got that.

Q. 74. The North 14½ Esatw chains to a Post Oak.

A. Yes, we have that.

Q. 75. Then North 20 West 10 chains to High Top Tatoe Hill.

A. We have that.

Q. 76. Did you find such a place called Tatoe Hill?

A. Yes.

Q. 77. What do you mean?

A. Just a place called Tatoe Hill.

Q. 78. Then North 60 East 16 chains to Hickory.

A. No Hickory marked.

Q. 79. Then North 72 East 18 chains to top on ridge.

A. I don't know about that.

Q. 80. Then North 8 chains to top Chestnut.

Q. 81. Then North 30 West 15½ chains to a basin on high top of ridge to Locust.

A. Well, we passed that.

Q. 82. Then North 54½ East 18 chains to Spanish Oak.

A. We passed that.

Q. 83. Then North 14 East 15 chains near a locust.

Q. 84. Then North 42 East 12 chains to a crooked chestnut. Do you remember that?

A. I don't remember that.

Q. 85. Then North 42½ East 10 chains to Hickory.

A. We passed that.

Q. 86. Then North 44 East 28½ chains to two chestnuts.

Q. 87. Then North 47 East 22 chains to Chestnut and Hickory.

A. We have that.

2874 Q. 88. Then North 44 West 10 chains to a small flat.

Q. 89. Then North 24½ East 8 chains to a high top.

A. We have that.

Q. 90. Then North 52 West, 8½ chains to white oak sapling.

Q. 91. Then North 22 East 44½ chains to hickory and pine on bench.

A. We have pine.

Q. 92. Then North 44 East 22 chains to Chestnut on Brow.

A. Haven't that.

Q. 93. Then North 8 East 12 chains to Hickory.

Q. 94. Then North 8½ East 30 chains to white oak.

Q. 95. Then North 34 East 25½ chains to Spanish Oak?

Q. 96. Then North 25 East 12 chains to large white oak?

Q. 97. Then North 1 East 75 chains to black oak and pine (pointing).

A. Well, we have that.

Q. 98. Then North 38 East 10 chains to Pine?

Q. 99. Then North 8 chains to Post Oak?

Q. 100. Then North 29½ East 14 chains to Black Oak [illegible]

Q. 101. Then North 37 West 9 chains to Pine?

Q. 102. Then North 24 East 17 chains passing Lee [illegible] West of the Station. Do you know anything about that?

A. No sir.

Q. 103. Then North 82 East 17½ chains to white oak, dead?

A. We passed dead white oak.

Q. 104. Then North 20½ East 8 chains to white oak?

Q. 105. Then North 30 West 22 chains to Black Oak?

Q. 106. Then North 21 East 18 chains to Black Oak?

Q. 107. Then North 41½ East 20 chains to Black Oak?

Q. 108. Then North 72 East 141 chains crossing Tennessee River to stake on bank?

A. We went across the river to the spruce or hemlock tree.

Q. 109. On the State Line?

A. Yes sir.

2375 Q. 110. And that is the Spruce or Hemlock referred to in the early part of your deposition?

A. Yes sir.

Q. 111. Then the next line is about North 10 West about 157 chains along Peck or Parsons line across Tennessee River. I understand you did not actually run that line?

A. No sir.

Q. 112. Now I will ask you to state Mr. Chambers, whether taking this grant and these several calls including such well known and defined places as Signal Station or Signal Cedar, Hang Over Rock, the State line crossing the Tennessee River and the mouth of Slick Rock Creek there would be any practical difficulty in surveying out that grant so as to make it close?

A. Taking the general points from the beginning to the river, following the line as indicated by the State line, as I understand it runs there as claimed by the parties, following the dividing ridge it would be no difficulty in following it. The calls of the grant will carry me to this point; that is, to the North of the river. When you begin at the mouth of the Creek there is no difficulty about getting back to the mouth of the creek. A surveyor could not make any mistake in following the White and Bearden line and so on to the State line.

Q. 113. Now, could you have taken the mouth of Slick Rock Creek as the starting point and reversed the calls and run around?

A. Yes sir.

Q. 114. I see here in the grant the following: South 63½ East 10 chains to Bearden's corner at mouth of Slick Rock Creek. Now it is generally understood and the fact is that one of Bearden's corners was at the mouth of Slick Rock Creek, was it not?

A. Yes, that is my understanding.

A. Yes, [illegible] approximately.

Q. 3. Yes.

A. Well, yes.

Q. 4. The line between the Ocoee and Hiwassee Districts is not near where this land in dispute lies to the Tennessee River, is it not?

A. This line here? (Indicating on map.)

Q. 5. The line between Ocoee and Hiwassee Districts is the Tennessee River, is it not?

A. Partly, as I understand it.

Q. 6. From the State line where it crosses Little Tennessee River and down the river for some 6 miles is to run the line between Ocoee and Hiwassee Land Districts is it?

A. From the mouth of Slick Rock Creek down I take it that the land on the North side is in Hiwassee District, and on the South side to Tellasee Creek is in the Ocoee District. As to this land on the East side of the Slick Rock Creek it is in dispute.

Q. 7. How far up is the Tennessee River now navigable?

A. Where from, Russel Shoals or Chattanooga?

Q. 8. How far below the land in dispute is it not navigable?

A. Steamboats have run as far as Jim Bacon's, that is about 12 miles, that be 15 miles, by direct line to the mouth of Slick Rock Creek.

2378. Re-examination by Chas. F. Carter, Esq.

Q. 1. How far by the river?

A. May be 20 miles.

Q. 2. At any rate is it not navigable to mouth of Tennessee River?

A. No, not to my knowledge.

Re-cross-examination by T. J. D. McCroskey, Esq.

Q. 1. Now, going by your maps, exhibit 1 to your deposition, if I understand correctly, you made a survey, or at least made an effort to make a survey of the ground upon which the defendants claim in this suit, is that correct?

A. Well, I made a survey, but whether it is in accordance with that grant, that is for the Court to decide.

Q. 2. The beginning point of that grant is not very far to the South West of the Hang Over to the ridge?

A. Yes.

Q. 5. You ran from there down the Hang Over ridge *with* is the State line between North Carolina and Tennessee to the Tennessee River; is that correct?

A. So claimed.

Q. 6. You ran down that ridge?

A. Yes sir.

Q. 7. In running down that ridge from the beginning point to the Tennessee River did you undertake to follow the calls as laid down in the grant or top of the ridge?

A. Yes, I think so.

Q. 9. Is a matter of fact you made your survey with the top of the ridge and what you understood to be the State line regardless of the calls of the grant?

A. Yes.

Q. 9. Did whether you were following the ground or not course made to run?

2379 A. Only as a general course.

Q. 10. But in a general course you did follow the ground?

A. To explain it to you. You go to the upper the beginning corner of the grant. If you traverse the ridge you will find several calls in the Hemphill's but in a general course this would be about what the grant calls for.

Q. 11. How far is it from the beginning corner of the grant to the Tennessee River?

A. Don't recollect, will say Griffith.

Q. 12. The beginning corner is on the line between Monroe County, Tennessee and Graham County, North Carolina?

A. That is the way the Grant runs it.

Q. 13. I ask you as a matter of fact

A. That is the point pointed out to me.

Q. 14. And in running to the Tennessee River you run and cut the line of Monroe County?

A. I suppose so.

Q. 15. Do you know so as a fact?

A. No sir. It is in dispute.

Q. 16. In following the calls down to the point at North 40 East 141 chains crossing the Tennessee River to the stake on the Bank and then the next call is about North 30 West 175 chains along Peck or Parson's line across the Tennessee River. You have no personal knowledge of the Peck and Parsons line do you?

A. Nothing definite.

Q. 17. Have you ever seen the calls of the Peck or Parson line?

A. I have not.

Q. 18. Now I understand in your examination that you went across about 150 feet and made your corner on the marked Hemlock?

A. There is a Spruce Pine there that I think is on the State line.

Q. 19. Why did you not stop on the Bank of the river?

A. There was not any stake there but there was some trees marked where we stopped

2380 Q. 20. Who were with you?

A. Mr. Ker, Bud Griffith, Tom Dotson. I believe that is all.

Q. 21. This line running down the river closes out with Peck and Parson's line. As a surveyor in running this line you would have no difficulty in properly locating the Peck and Parsons line would you if you knew where it was would you not?

A. Well yes, but if it closes to this line here North 40 West 175 chains I would follow the North 40 West.

Q. 22. Suppose you would find the Parsons line?

A. If I had the calls of it I would.

Q. 23. I read you copy of entry No. 1755 dated September 27th, 1883, files as exhibit No. 2 to your deposition, which was, "Beginning at the State line between North Carolina and Tennessee on the East side of the river, running down the river with the Parsons entry to the John Howard lands, thence down the bank of the River to Telassee Ford, thence across the River to the opposite bank; thence up the river to the Bearden entry and with the Bearden entry to the State line, thence from the State line to the beginning;" hence that entry closes on the state line between North Carolina and Tennessee and on the East bank of the river?

A. I suppose so.

Q. 24. The- it closes down the river with the Parsons entry to the John Howard lands; that would mean running down the river with the Parsons line?

A. Yes.

Q. 25. How far is it from the State line to John Howard Land.

A. I don't know.

Q. 26. About how far?

A. 8 or 10 miles, may be not that far?

Q. 27. That is down the river towards Telassee Ford?

A. A mile further.

Q. 28. So it would be 9 or 10 miles from the beginning down the river to Telassee Ford?

A. Yes, it's about 6 miles straight across Ocoee land district.

2381 Q. 29. Up here to the river, 9 or 10 miles?

A. Yes.

Q. 30. Thence across the river to the opposite bank; that means when you cross the river to stop on the bank does it not?

A. Yes.

Q. 31. Thence up the river to the Bearden entry?

A. Yes.

Q. 32. The Bearden entry up the river edges on the Tennessee River below the mouth of Slick Rock Creek?

A. Yes, just below it.

Q. 33. So that entry calls to begin on the bank of the river on the north side and runs down 9 or 10 miles and crosses back and runs up the river on the bank and then runs toward Slick Rock Creek?

A. I suppose so, the way you read it to me.

Q. 34. Does nothing but take in the river?

A. Up to that point.

Q. 35. In other words it runs down the river 9 or 10 miles and back again 9 or 10 miles on the other side of the river and takes in the river and nothing more.

A. Yes to the mouth of Slick Rock Creek.

Q. 36. How far is Telassee ford from the mouth of Telassee creek?

A. Half a mile.

Q. 37. The ford is about half a mile below the mouth of Telassee Creek?

A. Yes, the line commences between Telassee Creek and Telassee ford, and it is about 6 miles across to the mouth of the creek.

Q. 38. On the Hale map referred to in the beginning of your cross examination the Tennessee River is approximately correctly called, is it not?

A. Well, I take it for granted that it is; I think it is, yes.

Q. 39. Below the mouth of Slick Rock Creek is the river very crooked?

A. Yes.

Q. 40. For some distance at the mouth and below the mouth it is comparatively straight?

2382 A. Just below it is not straight, but something like as indicated on map.

Q. 41. When did you make this survey?

A. Last day of April.

Q. 42. You have been back there recently making some surveys?

A. Yes, but not on this business at all, nothing connected with it at all.

Re-examination by CHAS. T. CATES, JR.:

Q. 1. Mr. Chambers, as surveyed and laid down on this map how much of this grant No. 41091 lies North of this river?

A. How many acres?

Q. 2. Yes, about how many acres?

A. Well, this line is supposed to be 155 chains, that is 310 poles and it would be 188; that would be about one third of that.

Q. 3. Just approximte the acreage.

A. About 150 acres.

Q. 4. You have surveyed over there recently?

A. Yes.

Q. 5. Along this State line?

A. Yes.

Q. 6. I will ask you if you found a corner of some grant or entry North or East of the River on the State line a short distance from the river?

A. Yes, about a quarter of a mile. We found some trees blazed there denoting that was a corner. We marked that.

Q. 7. Bore the customary marks of a corner?

A. Oh yes, and trees blazed around there.

Q. 8. Do you know whether that was a corner of the Peck and Parsons entry?

A. I don't know, suppose it was.

Counsel for defendant objects on the ground that it does 2383 not refer to the subject and is irrelevant.

Q. 9. Do you know how many Peck & Parsons corners or entries there were North of the river and along this State line or the Blount County side?

A. No sir.

Q. 10. Do you know anything about the John H. L. Peck entry?
A. No sir.
Q. 11. Now you were asked by Col. McCroskey, in reference to the description contained in this entry 1755 and he called your attention to the beginning of that description as follows: "Beginning at the State line between North Carolina and Tennessee to the East side of the River, etc."
A. Yes sir.
Q. 12. Now the East side does not necessarily mean the East bank does it?
A. No no.
Q. 13. I believe you stated that you did not know whether there were one or more Parsons entries on that side of the river?
A. No sir, I do not.
Q. 14. I read you the following description: "Beginning at Signal cedar located between Hang Over Rock and Ball Mountain on the State line between North Carolina and Tennessee, to North east side of Parsons' or Peck's entry; thence until it strikes Tennessee River; thence to South West side until it strikes Bearden's corner at the mouth of Slick Rock Creek on Tennessee River and with its various calls until it strikes the said State line and with it to the beginning." Please state whether or not that description practically describes the Grant No. 41091 as surveyed by you?
A. It does.
Q. 15. Mr. Chambers, I read you this call, "from the bank thence to North 40 West about 155 chains along Pecks or Parsons line across the Tennessee River." In the absence of a definite location of Pecks or Parsons entry, what would be the survey in running out that line North 40 West 155 chains?
A. Well, I would say 40 West and run the line.
2384 Q. 16. Just as you plotted on this map?
A. Yes sir on a straight line.

Recross-examination by T. E. H. McCroskey, Esq.:

Q. 1. In regard to the line North or North East of Tennessee River which you have marked on your map, you made no survey across the river at all?
A. Nothing only set the compass and saw which way to run, whether directly down the river or to the North of the river.
Q. 2. Then you plotted in the river down there and assumed that the line would touch the river as shown about the bend there, is that correct?
A. Yes, we assumed that.
Q. 3. So you plotted across the river did you; you made no survey there?
A. No.
Q. 4. And you did not know whether the distance 155 chains would reach the river or not at that time.
A. No I did not. But the 5 chains would go to the South West Bank of the river. I knew that the next call 94 chains would cross the river twice, going back to the mouth of Slick Rock Creek.

Q. 5. If you had got your proper location by the first call across the river correct then it would cross the river coming back again?

A. Yes, 94 chains will cross the river twice.

Q. 6. To explain yourself you simply plotted in both lines without actually taking the survey until you got back to the mouth of Slick Rock Creek?

A. We crossed the river with the survey to the North side. Near the north East bank of the river we set the compass to North 40 degrees West. Prior to that time we were at the mouth of Slick Rock Creek. We went down the river there 10 chains then reversed this call and went across the river here (pointing to map) and it would only lack 5 chains by drawing a straight line here to where these would meet.

Q. 7. Do you mean that you actually surveyed the line
2385 reversed from the mouth of Slick Rock Creek?

A. I mean the first line from the Bearden corner at the mouth of Slick Rock Creek down the river. We actually surveyed and measured this which is the last call to the creek. We took the bearing of their line and saw that it would cross the river 94 chains, and went down the river and took angles and saw that it would, by extending the line from the State Line from the North side then 40 degrees West would approximately strike the line crossing the river.

Q. 8. You did not survey the 94 chains?

A. We did not, but we went down far enough to see that it would cross twice.

Re-examination by C. T. Cates, Jr.:

Q. 1. As I understand it after you had run the call in the Grant North 32 East 144 chains, crossing the Tennessee River and establishing a corner on the State line North of the River you didn't actually run the call about North 40 West 155 chains but set the compass and saw that it would strike a point at or near the river about the turn as indicated on this map?

A. We did.

Q. 2. Then you actually did run the call; the last call in the grant beyond and reaching to the mouth of Slick Rock Creek?

A. I did.

Q. 3. I refer to call South 63½ East 10 chains to Bearden's corner at mouth of Slick Rock. That call you actually did run, reversing the calls?

A. Yes reversing the calls and run 10 chains.

Q. 4. Then the call immediately preceding that one by reversing the call through the compass, you laid down the line on this map?

A. I did.

Q. 5. State whether or not reversing the call through the compass and by the method used by you as stated, you saw that line would cross the river twice, as laid on this map?

A. As laid on this map, yes sir.

2386 Q. 6. The end of it reversed being but a short distance some 4 or 5 chains from the end of the 155 chains line?

A. Yes sir.

This witness further deposeth not.

2387 MARY L. MORTON et als.
VS.
OLNY DOTSON et als.

This day came Foster Clark by his solicitors and moved the Court for permission to be joined as one of the complainants in the above entitled cause, and it appearing from the records, that said Clark claims an interest in the land sued for in the above entitled cause, under and by virtue of an arrangement between him and certain of the heirs of Samuel J. Griffitts, deceased, therefore, the court is pleased to order and decree that the said Foster Clark be permitted to become and he is hereby made one of the parties complainant in this cause.

Thereupon came all the parties complainant and defendant, by their solicitors, and admitted in open Court that the matters in controversy in this cause have been compromised and settled, and that all of the complainants have agreed to transfer their respective interests in the land sued for to the Babcock Lumber & Land Company, and all the right, title, claim, interest and demand, which they, and each of them, have in and to said lands be divested out of them and vested in said defendant, the Babcock Lumber & Land company:

Thereupon it is ordered, adjudged and decreed by the Court that all the right, title, claim, interest and demand, which the complainants, Mary L. Morton, Nora N. E. Hitch and husband, John S. Hitch, A. W. Morton, Sarah S. J. Wade and husband, William J. Wade, John Parks Morton and Gilbert A. W. Morton, Samuel A. Griffitts, George A. Griffitts, S. E. Iddens and husband, W. E. Iddins, Vicey Griffitts, Annie Kerr and husband, W. R. Kerr; Lucy Howard and husband, J. D. Howard, and Mary Howard, and Foster Clark and all of them have in and about the land sued for be, and the same is hereby divested out of them and vested in said defendant, lie in the 17th District of Monroe and Blount Counties, in the state of Tennessee:

Beginning at a cedar on a signal station on the line between North Carolina and Tennessee bordering Monroe County, Tennes-
2388 see; thence with said State line between said States north about 14½ East about 81 chains to Hang-over Rock; thence following said State line to an- crossing the Little Tennessee River to a stake or tree somewhat above the bank of said river, a corner to a Peck or Parsons entry; thence with said Peck or Parsons line North about 40 West about 155 chains to the little Tennessee River; thence south 70 West 5 chains to a stake in the Southwest side of little Tennessee River; thence South 10 East 94 chains to a stake near said River; thence South 63½ East 10 chains to the mouth of Slick Rock Creek, Bearden's corner; thence up Slick Rock Creek and with Bearden's line through entire township of 2 North Range six East, South 45 West about 960 chains to a stake at intersection of Township 2 North and 1 South at said Range, Six East with said line dividing 2 North and 1 South; thence West 480 chains to a stake at Northwest corner of Section 3 and Northeast corner of Section 4 of Township 1 South; South 329 chains to a stake at Northwest corner of

Section 16, East 320 chains to stake at North east corner of Section 14 and Northwest corner of Fractional Section 13 South 160 chains, to a stake on the top of the mountain on the line between North Carolina, and Tennessee; thence with said state line to the beginning; and being the same tract of land granted by the State of Tennessee on January 10th, 1886 to Samuel J. Griffitts and John H. Morton by grant No. 41091, which was duly recorded in the office of the Register of the Land Office for East Tennessee at Knoxville, Tenn., in vol. 33 at page 276, to which reference is hereby made.

And further it is adjudged and decreed, in pursuance to said settlement and compromise, that the defendant, Babcock Lumber & Land Company, pay all the costs for which execution may issue.

The foregoing decree approved by the Chancellor and ordered entered of record on March 4, 1909.

2389 I, Vastine Stickley, Clerk & Master of the Chancery Court of Monroe County, Tennessee, do hereby certify that the foregoing is a true and perfect copy of the Bill, Answer, deposition of W. P. Chambers, and the Decree of the Chancery Court of Monroe County, Tennessee, in the case of Mary L. Morton *at* als. vs. Olney Dotson et al., as the same appears of record in my office.

This 6th day of September, 1911.

[Seal of Chancery Court, Monroe County, Madisonville, Tenn.]

VASTINE STICKLEY,
Clerk & Master.

End of Exhibit "AA" to deposition of W. D. Hale.

2390 It is agreed by counsel representing the complainant, North Carolina, and the defendant, Tennessee, that the Acts of the General Assembly of North Carolina and Tennessee touching upon or relating to the matter of the boundary line between the States along the line in dispute shall be considered as part of the record in this cause, subject to all proper exception, and that each of the parties will furnish to the other a statement of the Acts of said General Assemblies which each party expects or proposes to rely upon in the trial of this cause in the Supreme Court of the United States, and that such statement be furnished before the preparation of the briefs to be filed on the trial of this cause, or at such times as either party may request the same to be furnished through the Attorneys General of the two States. This agreement intended to obviate copying into the record the Acts which each party desires to use, unless either party so desires to have them copied.

Certified to:

S. E. CLEAGE,
Clerk Supreme Court of Tennessee.

2391 In the Supreme Court of the United States.

THE STATE OF NORTH CAROLINA, Complainant,
against
THE STATE OF TENNESSEE, Defendant.

List of Exhibits Not Included within Bound Volumes.

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2393 In the Supreme Court of the United States.

No. —, Original.

THE STATE OF NORTH CAROLINA
against
THE STATE OF TENNESSEE.

STATE OF TENNESSEE,
County of Knox:

I, Samuel E. Cleage, Clerk of the Supreme Court of the State of Tennessee, and as such acting as Commissioner to take depositions in the above entitled cause, do hereby certify that the witnesses whose testimony appear in this volume of testimony, to-wit: John R. McClellan, John L. Williams and W. D. Hale, personally appeared before me in the Supreme Court room at Knoxville on the day stated and were by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that they did depose to the matters in their respective depositions set forth, and did, as certified to, either subscribe their names in person to said depositions or their names were subscribed thereto by myself or the stenographer under the agreement of counsel for both parties, and did file the exhibits called for in each of said depositions; and that the counsel for the complainant State of North Carolina and the defendant State of Tennessee did make the several agreements set forth in this volume of testimony and certified to by me; and I further certify that counsel for complainant and defendant appeared on behalf of said complainant and defendant as stated in this volume of testimony.

In witness whereof, I have hereunto set my hand and seal on this the 26th day of December, 1911.

SAMUEL E. CLEAGE,
Clerk Supreme Court of Tennessee.

[End of Volume II.]